THE

REVENUE REGISTER.

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MADRAS AGRICULTURAL COLLEGE.

We have just received the Prospectus of the Madras Agricultural College, the object of which institution is, we learn, "to afford *instruction in the* science of agriculture *and in the* practical application of sound principles in conducting the ordinary agriculture of this country." We wish the new College every success, and hope that the students to be educated there may acquire such an amount of practical knowledge that they may become a just source of pride to their teachers, and a blessing to the country at large. We think that the Agricultural College will prove useful, and will be calculated to do good, in many ways. No doubt, one of the primary objects of its establishment is to disseminate a correct knowledge of the science of agriculture, and to lead the cultivating classes to the employment of new and more scientific modes of cultivation. We see, however, a utility beyond this. May this not be one answer to the poor white problem, which still troubles the minds of well-wishers? Will it not open up new fields of industry and employment? May not the lads educated at the Agricultural College become the colonists and successful tillers of the vast unoccupied lands of Southern India? Up to the present time, no doubt, the feeling has been widely disseminated that all manual labour was disgraceful; and the youth who failed to find employment in the Government service, or that *refugium peccatorum,* the railway, would rather waste his time in fruitless begging than set his hand to any less dignified employment. In the olden days when Europeans and East Indians were few in number, when the demand exceeded the supply of intellectual labour, our youths could make pretty sure of a clerkship or some such appointment in the service of the State; but now-a-days with B. A.s more plentiful than horsekeepers, and natives winning for themselves an equal place in the competition, there is no longer room and to spare. The services are glutted, and the youth who has been educated to the highest point of modern perfection finds himself, with his cultivated mind and refined tastes, in a truly pitiable position. He cannot dig, and to beg he is or ought to be ashamed. We hope that the new Agricultural College will open to our sons a field of labour honourable and useful, a career that will give employment to their heads and their hands, and which is shared in by lads of good family and excellent brains both in England and Germany. We would heartily commend to the careful perusal of the lads of this country a book entitled "Self-Help" by Samuel Smiles—a

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man who helped himself, and who shows most clearly how all may help themselves and conquer the obstacles that may surround their path. We must not, in our interest in the youth of the country, forget that the Prospectus of the new College lies before us. On the first page we find a correct list of the lecturers appointed, and among them we see with pleasure some familiar and much-respected names. Where all the teachers are able and learned, it is invidious to make any remark on an individual; but may we not be pardoned if we congratulate the College and the students on the acquisition of James Keess, M. D., as Professor of Zoology? Dr. Keess unites to the most accurate knowledge, a winning manner, a command over the attention of his class, and a method of imparting instruction that are as rare as they are invaluable.

Every facility for practical, as well as theoretical, knowledge will be found attached to the College; a farm in full working order, educational buildings, workshops, library, veterinary hospital, &c., while harmonious working, and efficiency of detail will be amply secured by the selection of the Superintendent of Government Farms as the Principal of the College. Mr. Robertson has proved such an energetic worker in this country and possesses such a wide field of scientific knowledge that he is a tower of strength; and with him as Principal, the College cannot help doing well. The only thing needed to make the College most popular, and to attract to it youths from the upper ranks of the East Indian community, is the prospect of their training leading to their appointment to definite ranks in a definite service. We mean that the Government should create a department analogous in some respects to the Forest Department, or perhaps attached to it. In this service there might be various grades and the boys who desired it, and deserved it, might, on the completion of their curriculum, be selected for Assistant Superintendents of District Farms, with prospects of advancement. We can hardly foreshadow anything in this direction. We are all too apt to look to the State to do everything for the country. But really this country must not be regulated by principles governing European countries. Here the State must necessarily be the great employer of labour and the conservator of advanced principles even after their introduction. We may, therefore, look forward to a Government Agricultural Department. And why should not, we? Twenty-five years ago there was no Forest Department.

We think the curriculum has been well arranged. Three years of attentive study and practical working, should be sufficient to fit students to commence a useful and intelligent career. "The instruction given in the institution will embrace a thorough study of agriculture and of such portions of Chemistry, Geology, Zoology, Botany, and the Veterinary Art as bear on the theory and practice of agriculture. * * * During the portion of the day set apart for practical instruction in farming out of doors, every student will be expected to take part in whatever work is going forward on the farm; compliance with this rule will be strictly enforced." This latter clause is, we think, excellent. Five minutes practical working will illustrate and fix on the memories of the pupils an hours theoretical instruction. As to admission—all are free to enter. Students who have passed the Matriculation or General Test will be eligible without any further examination; and other candidates will be expected to pass a simple examination in English, Arithmetic, the Vernaculars, History, and Geography. There are to be twenty-four stipendiary studentships and three scholarships. The scholarships will be of the value of Rupees 10 a month, and will be tenable for two years under certain condi-

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tions. Certificates will be given at the conclusion of the course of training to those students who are duly qualified and whose conduct has been satisfactory. Young men who are under training for School-masters will be permitted to attend lectures and undergo a partial training at the Agricultural College, with the view of enabling them to teach the science of agriculture subsequently in schools to which they may be appointed. A copy of the curriculum and of the time table for the first session is attached to the Prospectus. We are glad to see that landowners and others desirous of having young men taught at the College can enter students there under the rules and regulations prescribed for Government stipendiary students—provided that the stipends are paid regularly *one month in* advance to the Superintendent, Government Farms. Such is a brief resumé of the prospectus of what promises to be a useful and successful institution. We wish the Agricultural College all possible success, and hope it may turn out many industrious and able men whom Madras will be proud to acknowledge as her sons.

FOREST ADMINISTRATION, 1874-75.

We have been favoured with a copy of the Revenue Board's Annual Administration Report of the Forest Department for the official year 1874-75; and although it may seem devoid of attraction to the general reader, it is nevertheless a document of immense interest to the serious thinker, as faithfully narrating the progress of operations in a Department of the State engaged in conserving and forwarding one of the most important resources of this country, which, though not directly profitable at present, gives every promise of yielding no inconsiderable financial returns in the future. The subject is treated by the Board under six sections; viz., 1, Tours of Forest officers; 2, Forest and Fuel Reserves and Plantations; 3, Forests worked under license; 4, Yield of Forests; 5, Financial Results; and 6, General remarks. On the first of these heads, we find that Captain Walker, who was acting as Inspector-General of Forests in the absence of Colonel Beddome, visited nearly all the Forest Ranges of this Presidency during the year. The few that he did not visit he had inspected just before the close of the preceding year. He was absent from his head quarters 232 days out of the 365, a fact which cannot but speak most favourably of his zeal and energy. The Collectors of Ganjam, Coimbatore, Salem and Malabar, in their capacity of Conservators, visited some of the forests in their districts, and the Collector of Cuddapah inspected the reserves and plantations which are being extensively pushed in that district. The Collectors of the remaining districts do not appear to have visited their forests, not, we presume, from any want of interest, but, most probably, from lack of time. Mr. Wedderburn of Coimbatore, with his usual interest in all that concerns the welfare of his collectorate, spent 123 days in inspecting the Forests, a circumstance that was noticed with much pleasure by the Board of Revenue. All the forests do not appear to be worked in the same way; some of the trees in the forests are felled by departmental agency, while others are felled on what is called the license and voucher system. We find from the comparative statements of the last two years, that there has been a decrease both in the amount of timber felled and sold, and also in the value and the sale-proceeds. The decrease in the timber sold appears to be variously attributed in different districts to losses on auction sales, to reduced demand for public departments, to the unremunerative rates prescribed for timber supplied to the Public Works Department, to the owners of private forests having undersold Government, to the Railway supplying themselves from private sources, to the glutting of the Mysore market, &c. On the whole, we are told "that the decrease may be said to be mainly due to less timber having been taken by the Public Works and other Departments of the State. The proceeds of such supply fell by 72·5 per cent, while private sales fell only 4·2 per cent."

The subject of Forest Reserves is passed without any comment by the Board; but they direct their attention to the question of Fuel Reserves. In Cuddapah, three new large reserves were opened, an extent of 1,000 acres being added to one of the old

reserves. Though not one of the reserves has as yet begun to pay, while the expenditure has been very heavy, being Rupees 14,000 as against Rupees 400 in round numbers of the preceding year, there is reason, however, to hope that a foundation is being laid for future profit. In Trichinopoly, one fuel reserve has commenced to pay, although the receipts are small at present. The area of fuel reserves was extended during the year from 98,690 acres to 1,09,998 acres. The expenditure on these reserves, exclusive of the charges of the general establishment, amounted, up to the end of 1874-75, to Rupees 74,849; but they have not yet commenced to yield any return except in a very few localities. The receipts against expenditure up to date amount to only Rupees 4,369. The Board consider it desirable that there should be an accurate account of the amount spent on each fuel reserve, including the proportionate cost of the General Establishment; but they state that measures have been taken to have such accounts compiled, and the result reported by the Conservator.

As to *Plantations*, among the trees planted we find the Teak, the Babul, the Sandalwood, Mahogany, Mango and Casuarina. The reports from the different districts do not, in general, appear to be very hopeful, as white-ants, heavy rains, floods, unsuitable soil, &c., appear to interfere with the progress of the plantations. We are, however, glad to learn that a mahogany nursery and sandalwood seedlings are doing well at Metapolliam. The Board of Revenue make no remark in respect to Forest yields: they simply give an abstract showing the quantity of timber felled or removed free of payment. The *Financial Results* are noticed however by the Board. We find that receipts from all sources amounted to Rupees 3,64,326, while the charges amounted to Rupees 3,97,872. This is considered satisfactory, showing a working profit of Rupees 70,535, if the charges and receipts to the Fuel Reserves and Plantations, which have not yet commenced to pay, are excluded. The value of the stock in hand was at the end of the year less than it was at the commencement; but this appears to be accounted for by the difference in the mode of valuation; the old stock having apparently been valued at a higher figure per cubic foot than the new stock.

In the way of general remarks we do not notice anything very special, unless it be on a plan of Mr. Puckle's in Tinnevelly, where we find that "the jungles on the lower slopes of the hills which are divided from the conserved forests higher up by a path and fence, are set apart as grazing and firewood jungles for the use of villagers. These tracts are again divided into blocks, are to be used one at a time, while the others are growing up. These tracts are looked after by the villagers themselves." Mr. Puckle remarked, in a memorandum he left, "the hill-side which a few years ago was bare, is now being rapidly reclothed, and if the system in force is persisted in for some years longer, our streams may become more perennial, and the valuable timber reproduced on the slopes which from their comparative accessibility have been most denuded." The Forest Officers, we are told, do not approve of this plan, for they say they do not know what goes on in these village tracts; but Mr. Comyn, the Acting Collector, approves of it; and no doubt where this system has been introduced and maintained, there is spontaneous reproduction on the hill sides.

We gather from the order of Government on the Board's report that the close connection which has recently existed between the Revenue and Forest Officers is not likely to continue. We doubt whether it will be altogether wise to make the Forest Department independent of the administrative control of the Pro-consul of each district. There cannot be two kings in Brentford, and unless the Collector is the supreme head of the executive in his district, there may be clashings of authority which will be neither agreeable to the Government, nor conducive to the welfare of the country. The Government are quite alive to the importance of unanimity of feeling; for they remark that, although for various cogent reasons it has been deemed desirable to place the Forest Department on a new footing as regards the Revenue Officials, they nevertheless feel "assured that the experience gained by some of these officers, and the interest in forest administration it has aroused in others, will be of great service to the State; and although the direct executive management will, for the future, be departmental, they (the Government) still look to the Revenue Officials of all ranks to aid the Forest Officials in performance of duties, which can hardly be successfully executed without their sympathy and co-operation."

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CORRESPONDENCE.

LONDON LIFE.

[From our Special Correspondent.]

Sir,

I was compelled to discontinue my contribution to the *Revenue Register* last April on account of unavoidable business which necessitated my presence in Constantinople, and I did not feel justified in professing to chronicle the sayings and doings of this great metropolis when sojourning so far from the scene of action. As a link between my last letter and the present one, possibly, some of my experiences in the city of the Sultan may not prove uninteresting to your readers, as the eyes of the world may now be said to be fixed upon the Porte, and our Indian possessions doubtless contain many individuals to whom the present and prospective value of Turkish bonds is by no means indifferent. Depressing, indeed, was the social aspect of Pera and Stamboul in April last; every one was, or professed to be, ruined; merchants, bankers, shopkeepers, brokers, and even "hamals," were all weighed down with a sense of impending financial woe. Conversation hinged on two topics only; the probable déscent of Turkish Consolictés to zero, and the likelihood of a general massacre of the Christians. If you spoke to a banker or a diplomatist, you were met with Burleigh-like nods and ominous shrugs of the shoulders; if you interviewed a newspaper correspondent, he led you to believe that, so far as regarded the Ottoman Empire, universal destruction was at hand, and shopkeepers and employés saluted you with one long wail of despair. The assassinations at Salonica did not tend to re-assure the public mind; and, curious as it may appear, the first ray of hope was kindled by the deposition of the Sultan. Although not generally known, it is a fact that the movement of the Softas was, in a great measure, prompted and directed by political wire-pullers in Great Britain; and it is more than probable that no two people were less surprised at the sudden downfal of Abdul Aziz than Mr. Disraeli and Lord Derby. Things had come to such a complete dead-lock, and the Sultan was so hopelessly imbecile, that his forcible removal was the only way to cut the Gordian knot. His subsequent end—whether we term it murder or suicide—was the inevitable result of his abdication. In a country like Turkey it is absolutely indispensable that the snake should be, not only scotch'd, but killed. Dethroned monarchs, with a tolerably strong contingent of interested and fanatical followers, are apt to be troublesome to their successors and prejudicial to the peaceful working of the State machinery. Thus it came about that Abdul Aziz was laid in the tomb of the Sultans exactly six days after he had been quietly deported from the imperial palace of Dolmabaktche. At first people were inclined to look at the revolution entirely through rose-coloured spectacles; immediate and sweeping reforms were predicted, Turkish funds went up, the Herzegovinian rebellion was to be stamped out, all State liabilities were to be discharged, soldiers, sailors and artisans were to be paid all arrears of wages, extravagant harems were to be curtailed, and a new era of prosperity was to ensue; but Turkish apathy and political intrigue soon dispelled the golden vision; and, when the two most able and honest Turkish statesmen of the day were cut off by the hand of an assassin, things began to drift back into the old groove. I do not mean to say that the Porte is in such a woeful plight as it was in March and April, but it is struggling amidst innumerable shoals and quicksands from which only the most skilful pilotage can extricate it. Russia is, no doubt, determined sooner or later to compass the downfal of the Ottoman Empire; but being extremely poor and unable to meet the expenses of war on a grand scale, she prefers a Fabian policy and elects not to pluck the fruit which ere long will, she hopes, drop spontaneously into her jaws. Servia and Montenegro are now at war with Turkey, and these rebellious vassals are most certainly subsidised and countenanced by Russia, whatever allegations may be made to the contrary. At present no reliable news concerning the warlike operations has reached England. If Servia is victorious and emancipates herself from Turkish rule, the "beginning of the end" will be at hand, and all the blood and treasure so lavished in 1854 and 1855 will have been thrown away; if, on the other hand, Turkey gets the best of the contest, Russia will step in to protect so-called "Christian" interests and a fearful imbroglio may arise from which we shall hardly be able to keep aloof. One "happy thought," however, occurs to me. Should a general European war break out, we need only, in jockey phrase, "sit still." In less than six months every State in Europe, with the exception of Great Britain and France, would be ruined and bankrupt. The day for foreign loans has passed. "Once bit twice shy," "a scalded cat dreads cold water," and a host of other familiar proverbs express the feelings of the British investor towards international loanmongers just now. Neither Russia nor Prussia nor Austria, nor Spain nor Turkey nor Egypt could raise one million on the London or Paris Bourses, and the more our European neighbours fight, the more powerful and independent shall we become. If the Northern and Eastern Powers do begin to quarrel in earnest, we shall soon be in a position to mount our dunghill, flap our wings, and crow lustily, for by the force of the "almighty dollar" we shall in the long run "lick creation." The Sultan Murad who was to do so much and prove the regenerator of Turkey

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has, in less than three months, been exposed and turns out to be as arrant an impostor as his predecessor. He indulges in copious libations of bottled stout and curacoa, he indulges his animal passions in a manner which cannot be mentioned to ears polite, he has fits of *delirium tremens*, he is afflicted with chronic carbuncle, and he is three parts imbecile. A promising monarch this! His deposition is only a question of days, nay hours, and the problem remains, who is to be his successor. All the direct or least indirect heirs to the Mussulman throne are old Turks "of the worst and most fanatical description." Were any individual of them to gird on the traditional sword of Mahomet and seize the reins of power, Midhat Pasha, one of the few straightforward and sensible statesmen who still survive at Stamboul, would be sent to the right about forthwith, and with him would vanish all hope of Turkish regeneration. Indeed, it is more than probable that with the resumption of power by the "Old" Turkish Party would come a strong public reversion of feeling in favour of Russia as compared with England. Then good-bye to the Empire of Turkey! It would not last three months; and, should the Porte thus wilfully reject the countenance and support and advice of Great Britain, public opinion in England would not permit any administration, conservative or radical, to intervene by force of arms. Russia, boa constrictor-like, would commence by licking Turkey all over with the deceptive saliva of flattery and compromise, and then ruthlessly swallow her whole. Before this letter is closed, we may hear of a Servian collapse; if that event should occur, a European conflagration may be anticipated, for Russia will never permit Turkey to "annex" rebellious vassals. It is imperative that this Eastern question should be settled. It has been hanging over us and threatening the peace of Europe for upwards of a quarter of a century, and cries aloud for decision of some sort. Bloodshed, suffering and large pecuniary outlay are inevitable, but perhaps we shall never find a more favourable opportunity than the present for settling the position which is henceforth to be assigned to the Porte in the Continent of Europe. Of course the question is not easy of solution; but like the big fence obstructing the onward career of the timid fox-hunter, the longer it is looked at, the more formidable does it appear. I fear Turkey is an anachronism and must be thrown over, but still my sympathies are with her. Why has she no virile minds to direct her course, intellects such as she could boast of four or five centuries ago? Alas, Western civilization has "enervated" without christianising her population. The utter downfal of the Turkish Empire might, I am well aware, cause considerable excitement among the Moslem population of India. If the Porte collapsed without an effort on the part of Great Britain to protect its existence, serious questions might arise in certain districts of our Eastern possessions. I suppose it would be impossible to convince Indian Mussulmauns how vicious and effete has always been, still is, and still is likely to be, the administration of the Father of the Faithful in Stamboul. Having said the worst of the poor Turk, let us now apply a little moral whitewash to his much-abused humanity. There cannot be a shadow of doubt that the barbarous enormities of which he has been accused in Bulgaria, Montenegro and elsewhere, are gross exaggerations or barefaced lies. Two blacks will never make a white, but it may safely be averred that the cruelties of the nominal Christians *have* quite equalled those of the Moslems. *Que voulez vous?* War, and especially civil war, is not made in "white kid gloves."

All these Continental disturbances have naturally affected monetary investments, and the last three months have proved as disastrous as many previous years of panic. Egyptian and Turkish Stocks are at the lowest ebb, Argentine, Buenos Ayres and all South American Securities are fearfully depreciated: a regular stampede has taken place on all bonds emanating from or connected with Russia. Spain still remains bankrupt and still repudiates, Italy *is* pauperised, and even Prussia has run through her two hunderd and fifty millions sterling, and her credit does not suffice to procure a paltry loan of five millions. In fact, England, France and Portugal are the only solvent States in Europe. Money is, to use a technical expression, a "drug in the market;" men of ample means can only enjoy restricted incomes, because they know not where to find a safe medium for the investment of their money. Millions are lying idle; the recklessness of past years is now replaced by an unnecessary caution; it appears that the *juste milieu* cannot be attained. Of course we all know that the higher the interest the worse the security, but there is a limit to that axiom, and it is curious to find that men who lately deemed 8 per cent interest not a whit too much for a *sound* investment now hesitate at $4\frac{1}{2}$! A re-action must come. It is to be hoped that it will not be too sudden and too rash. Meanwhile widows and orphans and other "innocents" have suffered severely by the financial cataclysm which dates from last October and is hardly yet concluded.

Mr. Disraeli's sensational purchase of Suez Canal shares has not effected any improvement in the nominal value of Egyptian securities, and the Khedive is fully as much embarrassed as his Suzerain on the Bosphorus. The quarrel with Abyssinia has proved a ruinous luxury, and we shall never ascertain exactly how much money King Kassai has cost the Cariene treasury. Englishmen know from experience in 1867 that nothing can be done in Tigre and the surrounding districts without a lavish outlay of dollars, and it is pretty certain that

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the Egyptians could not manage more economically than Lord Napier and his staff. The so-called unification scheme by which it is proposed to amalgamate all loans, including the floating debt and pay a uniform rate of interest on the whole, has not met with general approval; but a larger number of bondholders than was expected have signified a reluctant assent. It seems hard that those who lent their money on the faith of distinctly specified securities should rank with those who lent on no security at all. Probably, if the scheme is carried out, no one will get more than 3 per cent per annum. I would rather hold Consols! Mr. Goschen is endeavouring to bring about a more equitable compromise, but his prospects of success are but slight. Mr. Gladstone has spoken plainly in the House of Commons and says the Government are bound to indemnify bondholders of the Turkish loan of 1854, but Mr. Disraeli and Sir Stafford Northcote do not see the matter in the same light, and probably the late Premier would modify his opinion were he in office. Nothing more significant in the financial world has occurred than the utter inability of Prussia to borrow a few million thalers, either at home or abroad.

It would seem to indicate that conquest and annexation are not so lucrative as might be supposed, and that a huge armed force does not of necessity ensure a nation's prosperity. Bismarck and Moltke must feel inclined to ejaculate "another such victory and we are undone." English railways have been and still are quoted at a far higher figure than they are legitimately worth. Some sanguine investors must have experienced a rude shock the other day, when the Great Northern Railway dividend was declared. The price of the stocks was about 130, and shareholders received rather less than 2 per cent for the half year! Speculation has, to a great extent, ceased and brokers complain bitterly, but they must make up their minds to face the ups and downs of existence like the rest of the world; with a few months exception they have enjoyed "piping" times for twenty years past. Trade is dull as ditchwater and no revival is in prospect. The continual strikes and the prolonged struggle between the representatives of capital and labour are now bearing bitter fruits, and the unprincipled agitators who have so persistently urged on the ignorant working man to his destruction must be appalled at their handiwork if they have any consciences at all. Mills are stopped, furnaces are blown out, pits are no longer worked, manufactories are only working half time, distress and poverty are rife, hunger has replaced plenty, and all this is the outcome of the obstinacy and vanity of trades union leaders who fatten upon the credulity and ignorance of their misled victims, the working men of England.

People are asking, what is the "Maritime League" and what is the "Declaration of Paris"? Time slips away so nimbly that the Crimean War and the Peace of 1856 are almost forgotten, and the present generation knows nothing of their details. When war was declared against Russia in 1854, it appears that an order in Council was promulgated by which Great Britain, in conjunction with France, agreed to forego her hitherto jealously preserved maritime rights and to allow her enemy's goods to be conveyed in "neutral bottoms" free of molestation. That is to say, we allowed Russia to carry on her commerce undisturbed, and thus afforded her every facility for procuring the sinews of war. Having thus voluntarily sheathed our most effectual weapon, we suffered a loss of 30,000 precious lives and one hundred millions sterling in specie, and at the end of two years of suffering and suspense only succeeded in obtaining a most doubtful success. Had we maintained our maritime rights intact, we need never have entered upon the quixotical Crimean expedition; in three months we should have ruined Russian trade, and the merchants of St. Petersburg, Moscow, Cronstadt and Odessa would have been insolvent, and the Emperor Nicholas would have been constrained to sue for peace. What happened at the close of the 18th century? Great Britain was at war with Russia; we captured all her commercial ventures; all classes of the Czar's subjects insisted on peace in order to retrieve their shattered fortunes, and peace was made. In 1854 we had voluntarily yielded our maritime rights and we suffered accordingly. In 1856, a month after the conclusion of the "Treaty of Paris," our plenipotentiary Lord Clarendon, (the delegate of the powerful whig party then in office), took upon himself to enter into a certain undertaking which bears the title of the Declaration of Paris, and by it confirmed the provisions of the disastrous order in Council which had been originally published in March 1854. Lord Clarendon had no instructions from his Government, the matter was never brought to the notice of either House of Parliment, it was a hole and corner business, and although some few patriots, the late Lord Derby to wit, pointed out the perilous course on which we were entering, Lord Palmerston's popularity outweighed prudence and commonsense, and the matter was hushed up and then buried in oblivion. But "murder will out," and during the last few months an influential body of members of Parliament and others have formed themselves into a maritime league for the purpose of "agitation" until Government consents to take steps for a withdrawal from this insane "Declaration of Paris." Before next session it is expected that the country will be thoroughly roused, and Mr. Disraeli will assuredly take up the matter when he finds that public opinion demands it. During the recess, lectures on the subject will be given in all the principal towns of the United Kingdom, and the injury inflicted on England is so patent, when once explained,

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that the meanest intellect will realise the necessity of abrogating the Declaration of Paris.

The inquest on the late Charles Turner Bravo drags its slow length along and the public enjoy the washing of the very dirty family linen amazingly. The harvest which is being reaped by the evening papers gladdens the hearts of the farmers thereof, and the boys who sell the "awful disclosures" in the streets are amongst the few who have no reason to complain of the times being hard. Not long ago, when the youthful partner of a philanthropic marquis sacrificed her husband and society for the illicit love of a sexagenarian, it was perceived that many old gentlemen assumed a gayer air, brighter hats, more lustrous boots. And now orthodox medical men, while they hum and haw over heresies, hydropathic and homœopathic, look perky when the social success—and this, report says, only one of many—achieved by their veteran *confrère* is mentioned. Like myself, however, my readers will care to glance at the case merely on public grounds and in the hope that out of evil may come good. It seems to be felt amongst the select few who form the intelligent part of the population that the old form of coroner's inquest, once justly regarded like *Habeas Corpus* and Trial by Jury as a safeguard of British freedom, is unfitted to these later days. Money is the great motive power of the time, and when its mighty force is applied to little things it is very likely to smash them to pieces. The Court is here the little thing. Held in the billiard room of a little inn, it is presided over by a feeble coroner assisted by an assessor of equal capacity. Powerless to quell disorder, unable to distinguish the relevant from the irrelevant, incapable of conceiving of anything calculated to throw the faintest light on the subject of the enquiry, once and once only up to this stage of the proceedings has he seemed to rise to the occasion. This was during the examination of the cook. Some trivial questions had been put to her and she was about to depart in peace, when the coroner laid down his pen, and his hitherto lack-lustre eye was lighted by a transient gleam of what the new-comers among the audience believed to be intelligence. He was too wily to go straight to the point, and began by asking the witness vague questions as to the lamb which she had roasted for dinner on the fatal night and made believe to attach importance to the matter of mint sauce. But this was a mere feint; amidst breathless silence, he approached the circumstances of the dish of spinach. He noted with eagerness the cook's admission that she had sent up spinach. His voice full of excitement, he asked her how many eggs were served with the spinach, and his hard struggle to conceal his disappointment when she replied that there were no eggs, was painfully evident. There is no doubt that he thought he had a clue; his theory must have been that the antimony had been introduced into an egg. And thus it is that we are no farther advanced. We know that Charles Bravo died of poison, that Mrs. Bravo is a very naughty lady, and that Dr. Gully is a very fascinating old gentleman; but we knew most of this before the Treasury thought fit to make us pay for the details. The cost of the enquiry is something stupendous. Sir Henry James had a thousand guineas marked on his brief and receives fifty guineas a day as "refresher," which is enough to make him comfortable even in such oppressively hot weather. It is generally admitted, however, that the cleverest lawyer engaged in the case is the well known "criminal solicitor," Mr. George Lewis, junior, who has on more than one occasion amused himself by obtaining from a witness in ten minutes what the ponderous attorney-general had been unsuccessfully fishing for during half as many hours. As I am treating this sad affair solely from a useful point of view, and decline to meddle with the endless gossip to which it has given rise, it is to be noted that, in accordance with certain theories of descent, this is not the first generation of the particular Campbell family to which Mrs. Bravo belongs which has led a troublous life. Both her grandfather and grandmother received free passages to Australia in days before the tide of ordinary emigration had set towards the "fifth Continent." Placed under similar circumstances they married, and were fortunately enabled after a time to enlarge a thitherto somewhat restricted sphere. Fortune favoured their efforts and those of their son, who, coming to England possessed of considerable wealth, purchased Buscot and determined to live the pleasant life of an English country gentleman. And although the insular exclusiveness of many of his neighbours, brought to bear upon him on account of his colonial origin, is said to have caused the family to live in a certain amount of social solitude, I understand that he one year filled the important position of high sheriff of his county.

Mr. Gathorne Hardy, our present Secretary of State for War, has loyally endeavoured to carry out the views and plans of his predecessor in office, the imperious and eccentric Viscount Cardwell, but his complaisance is more worthy of admiration than his discretion, for the efficiency of our land forces appears to deteriorate month by month and year by year. The "mobilisation" scheme, about which there was such a flourish of trumpets last spring, has proved a most lamentable failure. The summer manœuvres have only sufficed to cover our military administration with shame and ridicule. The two corps d' armie supposed to be mobilised consisted of skeleton battalions of the line, a few raw militia regiments, a handful of Hussars and Lancers, no transport corps,

and about one-sixth of the required number of field guns. To call this "mobilisation" is a farce. We had much better give up our army altogether. It costs fourteen million pounds sterling per annum, and we have nothing to show for it. When so much money is, to all intents and purposes, "chucked away," it makes the most conservative military man inclined to sympathise with economists of the most prononcé radical proclivities.

With the thermometer at 95 in the shade, Parliament is still sitting; the Premier is punishing the factious members who have "stopped the way" during the session. To-morrow will be the festival of St. Grouse, and then no doubt the most obstinate will come to their senses. The session has not been sensational or eventful. I must defer my review of its leading features until next month.

I am, &c.,

PERIPATETIC.

HIGH COURT—MADRAS.

HOLLOWAY AND INNES, JJ.

Demise on Peruartham—*Local custom—Right to redeem.*

A sued to redeem certain property demised according to a local custom of Malabar on repayment of the mortgage amount.

HELD, *in accordance with a judgment of the late Sudr Court, that land demised on* Peruartham *was redeemable at the market value of the time of redemption, and not on repayment of the mortgage amount.*

S. A. 79 *of* 1876.

P. Shekari Varma Valia Rajah *v.* Mangalam Ammyar and eleven others.

THIS was an appeal from the decision of Mr. D'Silva, Subordinate Judge of South Malabar, confirming a decree of the District Munsiff of Palghaut.

"The plaintiff, the Rajah, sued for the recovery of the property mentioned in the plaint, alleged to have been demised in Minom 1009 by the then Rajah on *Peruartham* of 5,526 fanams to the first defendant's deceased husband's late father Pichu Iyen, on payment of the *Peruartham* amount to the first defendant. The second defendant denied the truth of the plaint, and stated that a document of the character mentioned in the plaint was not executed to the deceased Pichu Iyen; that he (second defendant) had, at present, no interest in the property; and that his right to the extent of 4,000 Rupees as the assignee of the first defendant had been sold by him to the twelfth defendant for Rupees 5,000. The fifth, sixth, seventh, eighth, ninth, and eleventh defendants, while denying the truth of the plaint, contended that they held the plaint paramba No. 7, having obtained it from second defendant for building houses therein, and that they owe rent to the second defendant who has purchased this and other property. The twelfth defendant contended that the suit was barred by lapse of time; that the property was derived on *Peruartham* by the first defendant's husband's father in Minom 1009; that this right was purchased by second defendant, who sold it to him (twelfth defendant); that *Peruartham* right was irredeemable; that in the event of redemption, he was entitled to the market value of the property; and that he had raised improvements and buildings at a large outlay. The first, third, fourth, and tenth defendants were *ex-parte*.

The issues in the case were:—

Whether there was any cause of action in this suit; whether the suit was barred by the Statute of Limitations; whether *Peruartham* right was redeemable; whether there was any specification of amount on the *Peruartham* deed; and whether the twelfth defendant was entitled to receive the amount advanced at the time the *Peruartham* was derived, or the marketable value of the property at the time of its restoration to the plaintiff.

The plaintiff's vakil, the twelfth defendant's vakil, two witnesses on behalf of plaintiff, and the Commissioner who submitted accounts after inspection of the property were examined. The merits of the case were gone into by the District Munsiff, and it appears to him at the first hearing that the suit was not barred by lapse of time. It appeared that the defendants admitted in their written statements that the plaint property was, in 1009, demised by the plaintiff's predecessor in stanom on *Peruartham* right to the first defendant's husband's father, the deceased Pichu Iyen; and that the twelfth defendant was now in possession through him. The next point for consideration was whether *Peruartham* right was redeemable. This point the Munsiff thought did not deserve any serious attention as it had been decided by several decrees that this right was redeemable. There was no sufficient oral or documentary evidence on the part of plaintiff to show that any amount was specified on the *Peruartham* deed. Of the two witnesses examined on behalf of plaintiff, one stated that the *Peruartham* right was granted in 1009 by the then Rajah, while the other contradicted him by saying that the right was granted by the plaintiff, and neither of them were able to mention the amount of the *Peruartham* deed

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The amount shewn in Exhibit A filed by plaintiff, and the statements of the plaintiff's witnesses convinced the Munsiff of the falsity of the assertion in the plaint that the property sued for was demised on *Peruartham* of Rupees 1,578-13-9. There was a great difference between the amount mentioned in the plaint, and that shewn in the account A. The statements of plaintiff's witnesses also did not in the least prove that any amount was specified in the *Peruartham* deed. It was therefore the Munsiff held certain that the document did not specify the amount of *Peruartham* right as to whether twelfth defendant was entitled to the amount advanced at the time the *Peruartham* right was derived, or the marketable value of the property at the time of its restoration to plaintiff, the decrees filed on behalf of the defendants shewed that in this case in which there was no specification of the amount of *Peruartham*, the twelfth defendant was entitled to the proper marketable value of the property at the time of its restoration under the decree. Under these circumstances, the Munsiff decreed that the defendants should restore the plaint property to the plaintiff, on payment by him to the twelfth defendant of the jenm value of the property to be fixed at the time of the execution of the decree, together with the value of the improvements and buildings belonging to him, and on payment to the other defendants of the value of the improvements and buildings belonging to them. Each party was ordered to bear his own costs."

From this decision plaintiff appealed to the Subordinate Court of South Malabar. The Sub-Judge improved the decree of the District Munsiff in the following words:—

"The original suit was laid to redeem six parcels of a wet land and two parambas attached thereto, with one tank, as having been demised in Minom 1009, by the plaintiff's predecessor in stanom to the first defendant's deceased husband's father, Pichu Iyen, on *Peruartham* tenure of 5,526 fanams (or Rupees 1,578-13-9), and the plaintiff offered to pay the said sum. The second defendant denied the truth of the alleged demise to Pichu Iyen, and stated that he had purchased the jenm right of the said property, with others, from Pichu Iyen for Rupees 4,000, and after making improvements thereon, had sold his right, title, and interest to the twelfth defendant for Rupees 5,000. The fifth, sixth, seventh, eighth, ninth, and eleventh defendants stated that they had severally obtained separate portions of the paramba No. 7 from second defendant to construct their dwelling houses on and made improvements, and that they were answerable only to twelfth, the representative of second defendant. The twelfth defendant contended that though the property had been demised in Minom 1009 to Pichu Iyen on *Peruartham* and had been sold on jenm by first defendant to second defendant, and by the second defendant to himself, still the demise was not as described in the plaint, but made without specification of the sum of money, and as such the property was irredeemable. The first, third, fourth, and tenth defendants did not appear. The District Munsiff of Palghaut has adjudged restoration of the property to the plaintiff on payment by him of the jenm value at which the same may be estimated at the time of the execution of the decree, and assessed the parties with their own costs.

The point for determination is whether the redemption of the property sued for is subject to the payment of only the value received at the time of the demise thereof on *Peruartham*, and what that value was. The Exhibits B, C, D, and E shew that, in two cases of property held on *Peruartham*, the ejectment had been decreed upon payment of only the amount advanced at the time of the transaction, and that the decree in one of the cases was confirmed by the High Court. On the other side, it is shewn by the Exhibits IV, III, and II, that in a more recent case in which the amount advanced at the time of the *Peruartham* transaction had not been specified in the document, restoration of the property was decreed on payment of the actual value of it in the market at the time of redemption, and that the said decree was also confirmed by the High Court. In the present case the plaintiff sought redemption of the property by offering to pay 5,526 fanams (equal to Rupees 1,578-13-9) as the amount for which it had been demised on *Peruartham* tenure; but his two witnesses, who pretended to have been present at the time of the demise, were unable to state the amount of the *Peruartham* alleged to have been specified in the document, and that the sum entered in A is Rupees 925-11-5. I am of opinion, however, that the last mentioned entry cannot be depended upon, but must be taken to have been a mere estimate, and at the time of the preparation of the original of A; for No. I, which purports to be the *Peruartham* document executed in Minom 1009, makes no mention of the amount, and No. V, which is a regularly stamped document relating to another *Peruartham* transaction between the same parties, is also without a specification of the amount, and yet Rupees 321-6-10 was entered in the original of A as the amount of the second *Peruartham* transaction, I cannot understand how the plaintiff came to know the amount of the first transaction to be Rupees 1,578-13-9, when his own witnesses do not know it and the entry in A was Rupees 925-11-5. If the amount was really specified in the first document, No. V, which was executed eight months after, would likewise have contained a specification of the amount. As explained in my previous judgment (Exhibit III), the *Peruartham* tenure is a transaction in which the proprietor re-

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ceives the full marketable value of the property for the time being, retaining the empty title of jenm (not being entitled to the smallest token of acknowledgment of proprietorship,) and in redeeming the property he repays, not the amount originally advanced to him, but the actual value of it in the market at the time of redemption. If he is to repay only the amount so advanced, then he does not pay *Peruartham*, because that term means full value realizable, and this value (considering the marketable value of landed property now compared to what it was thirty or forty years ago) would, on the contrary, be one hundred per cent more than the said amount. My decision of the point is that the redemption of the property sued for is subject to the payment of the actual value of it in the market at the time of redemption. I, therefore, confirm the Munsiff's decision with the slight modification that the plaintiff is to pay instead of the "jenm value" the full value realizable in the market, and I dismiss the appeal with costs against the appellant."

Plaintiff appealed to the High Court on the ground that the decree was wrong, in that it awarded to the defendants the market value of the lands in dispute, instead of the amount originally received by the plaintiff; that it was evident from A that the amount was originally specified in the instrument, and that it was Rupees 925-11-5; that Exhibit I was no evidence against the plaintiff, and could not be used to contradict A; and that the Lower Court misunderstood the meaning of *Peruartham*.

Ramachendraiyer for appellant.

The High Court delivered the following

Judgment:—10th July 1876.

The question is whether on restoration of land under a demise of the kind here in question, the market value or the sum originally advanced should be paid to the tenant.

There have been conflicting decisions upon the point. The tenure is almost confined to one or two taluks of Malabar, and one member of the Court with many years' judicial experience of Malabar does not remember a single instance of the question arising.

The late Sudr Court, following an investigation conducted by a very competent enquirer in which the opinions of skilled persons were taken, decided that the sum demandable in such a case is not the money advanced, but the value at the period of exercising the power of redemption.

We do not feel justified in altering a decree supported by authorities and based upon that enquiry and following the authorities on the other side.

The special appeal will be dismissed with costs.

HER MAJESTY'S PRIVY COUNCIL.

[Bengal Case.]

Undivided Hindoo family—Lord Canning's Proclamation—Will under Act I of 1867.

A certain undivided Hindoo family governed by the Mitacshara consisted of three brothers, Chundun, Moonnoo, and Gunga Pershad. Moonnoo separated from his brothers. Chundun had five sons; Gunga Pershad three, of whom two survived him. Sheo Dyal, the son of Chundun's fourth son, claimed one-fifth of the whole estate to the exclusion of the descendants of his uncle Ram Sahoy, son of Gunga Pershad. Ram Sahoy on his part claimed, as the sole representative of Gunga Pershad, half the whole property. The sons of Gouree Shunkur, Chundun's second son, claimed the whole property as theirs, on the ground that Lord Canning's Proclamation in March 1858 *vested the whole property in their father. They contended that the property thus became his sole and separate estate, and that he had no power to alienate it* inter vivos *or to bequeath it by will. The Judicial Commissioner found that part of the lands were settled with Chundun Lall (Gouree Shunkur's father) as the representative of the joint family, and part as his private estate; that Chundun had died before the Proclamation, but Gouree Shunkur and other members of the family survived and had been loyal; that it was not to be supposed that Government would desire to injure a loyal family; that the Proclamation did not affect family rights, and that as to the part granted to Gouree Shunkur as the reward of his loyal services, it must be remembered that his services were rendered by the use of family funds.*

By Section 2, *Act I of* 1869, Talukdar *was defined to mean any person whose name was entered in the first of the lists mentioned in Section* 8, *and in this list Gouree Shunkur's name appeared. By Section* 3, *a Talukdar was deemed to have acquired a permanent, veritable, and transferable right to his taluka. Gouree Shunkur, therefore, had this permanent, veritable right to alienate, transfer and bequeath his property. He had executed a will expressing his desire that his estate should follow the ordinary custom and be divided among his descendants, the eldest member of the family being the head. The Court of Cawnpore, however, in which Ram Sahoy brought his suit, held that Gouree Shunkur had not left a will; that the so-called will was only an answer to the enquiries of the Deputy Commissioner as to family custom; and that whatever power he had to dispose of property in Oude, he had no such power over property situated in the N.W. Provinces.*

Held, *that Gouree Shunkur had obtained by the settlement made with him by Government*

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a permanent, veritable and transferable right; that he had executed a will desiring that his property might follow the ordinary course of joint family property under the Mitacshara; that a document, not a will in the ordinary sense, might amount to a will under Act I of 1869; *that G. S., being a just man, had devised his property as is usual under the Mitacshara, and had even in his life treated the property as joint, and his brothers and their descendants as co-sharers; that, therefore, the claim of his sons to exclude the other members of the family could not be supported, and if Ram Sahoy wished to profit by this ruling he must bring into the common stock the taluka granted to his brother and himself.*

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of *Hurpurshad and others* v. *Sheo Dyal and others; Ram Sahoy* v. *Sheo Dyal and others; Balmokund* v. *Sheo Dyal and others*, from Oude, Consolipated appeals; and *Ram Sahoy* v. *Balmokund and others*, from the North-Western Provinces of Bengal, delivered 30th May 1876.

Present.

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

THE first three of the above-mentioned appeals are from a decree of the Judicial Commissioner of Oude, in a suit commenced in the Court of the Deputy Commissioner of Lucknow, in which the respondent, Sheo Dyal, was the plaintiff; and the fourth is from a decision of the High Court of Judicature for the North-Western Provinces, in a suit commenced in the Court of the Subordinate Judge of Cawnpore, in which the appellant, Ram Sahoy, was plaintiff.

The former suit will hereafter be referred to as the Oude suit, and the Record in the first three appeals as Record No. 1. The other suit will be referred to as the Cawnpore suit, and the Record in the appeal in that suit as Record No. 2.

The parties, both plaintiffs and defendants, were members of an undivided Hindoo family, of which Koonhoo Lall was the common ancestor. He left three sons, Chundun Lall, Moonnoo Lall, and Gunga Pershad. About the year 1832, Moonnoo separated from his two brothers, Chundun and Gunga Pershad, who continued undivided, lived in commensality, carried on business as bankers, and thereby acquired and amassed considerable property.

Chundun had five sons: 1, Chotay, who died in the lifetime of his father; 2, Gouree Shunkur; 3, Behari Lall; 4, Kunhya Lall, the father of Sheo Dyal, the plaintiff in the Oude suit; and 5, Jankee Pershad. Chundun died in 1854; Gunga Pershad died in Chundun's lifetime, having had three sons, Sheo Pershad, and Ram Sahoy, who survived him, and Ram Pershad, who died without issue in his father's lifetime. Sheo Pershad died without issue in 1863, leaving his brother Ram Sahoy, the plaintiff in the Cawnpore suit, his heir, him surviving.

Chotay Lall, the eldest son of Chundun, had three sons: 1, Balgobind, who died some years ago; 2, Balmokund; and 3, Banee Pershad, of whom the last two were defendants in both suits.

Gouree Shunkur, the second son of Chundun, also had three sons; Hurpurshad, Ramchurn, and Bisheshur Pershad, defendants in both suits, and appellants in the first appeal.

There were other descendants of Chundun through his sons Chotay Lall, Behari Lall, and Jankee Pershad respectively, to whom it is not necessary to refer more particularly. They are shown so far as is necessary in the genealogical table set out in the case of the appellants in the first appeal (p. 4.)

It appears from the above statement that the family consisted of two branches: the descendants of Chundun, and the descendants of Gunga Pershad.

Sheo Dyal, the plaintiff in the Oude suit, which was commenced on the 14th December 1869, claimed as the representative of Kunhya Lall, one of the five sons of Chundun, one-fifth of the whole property in suit by excluding altogether Ram Sahoy, the sole descendant of Gunga Pershad (Record No. 1, p. 2); whilst Ram Sahoy, who intervened in the Oude suit, and was the plaintiff in the Cawnpore suit, which was commenced on the 21st December 1869, claimed as the sole descendant of Gunga Pershad, one-half of all the property.

It was contended that Ram Sahoy had separated before the commencement of the suit, and had received twenty-seven villages and other property as his share. It was, however, considered by the Lower Courts that that fact had not been proved. Their Lordships are of opinion that there is no sufficient evidence of the fact, and that the decision was correct. That point may be treated as having been disposed of. It was also considered by the Lower Courts and admitted by the learned Counsel for the appellants in the first appeal, that although Chundun was the active member of the family, and the property was acquired principally through his ability, energy and exertion, no part of it could be considered as his "self-acquired property," that is to say, as having been acquired within the meaning of the Mitacshara, through his own exertions alone and without the use of any part of the family funds.

Their Lordships are of opinion that the above view is correct, and their judgment will proceed upon the basis that the family was an undivided Hindoo family, and that no portion of the

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property was the self-acquired property of Chundun or of any other member of the family within the meaning of the Mitacshara.

The most important questions raised in the Oude suit are what was the effect of Lord Canning's well-known Proclamation of March 1858 of the sunnud to Gouree Shunkur, of the summary settlements, of Act I of 1869, and of the documents called Gouree Shunkur's will, upon that portion of the property which was included in the above-mentioned sunnuds and summary settlements.

It was contended on behalf of the sons of Rajah Gouree Shunkur, the appellants in the first appeal, that all the estates included in the sunnud and summary settlements, whether previously joint property of the family or not, became the separate self-acquired property of Rajah Gouree Shunkur, that he was the sole malgoozar thereof, and that he and his sons were the sole beneficial owners of it; that he had no power to transfer it by will or by alienation *inter vivos*; and as to the twenty-seven villages, it was stated that although in April 1858, the summary settlement with regard to them was made with Kunhya Lall (p. 211), there was afterwards a mutation of them into the name of Rajah Gouree Shunkur (p. 395, l. 45).

It was also stated on their behalf that many, but without specifying which, of the villages included in the sunnud and summary settlements were never part of the joint family property.

By the 8th paragraph of the Proclamation it was declared amongst other things that Chundun Lall, Zemindar of Mourawan, and five other persons therein mentioned, were thenceforward the sole hereditary proprietors of the lands which they held when Oude came under British rule; and it was further declared by the 9th paragraph that, with those exceptions, the proprietary right in the soil of the province was confiscated to the British Government. (Record No. 1, p. 12.)

It was held by the Judicial Commissioner, in his judgment before remand, that the words Chundun Lall in that paragraph (probably the words used were Chondi Lall, as stated by the Judicial Commissioner, Record 1, p. 140)—were used as the generic name of the undivided Hindoo family (*id.*, p. 142, l. 15), and that the title of the constituent members of that family, as it existed in 1858, to whatever landed estates were held by them or their agents, directly or indirectly, on the 13th February 1856 (the date of the annexation of Oude), was maintained to them, and was not conferred upon Rajah Gouree Shunkur, notwithstanding any wording of the sunnud or the fact of his executing a cabulient for the estates between the 1st April 1852, and the 10th October 1859, but that the remaining portions of the estate rested on a different basis (*id.*, p. 142, l. 34; p. 381, l. 11). As to those portions he was of opinion that they "must be held to have been *primâ facie* the sole property of Rajah Gouree Shunkur, and that as a consequence of this (confirmed by Section 4, Act I of 1869), he had power to alienate it by act *inter vivos*, or to bequeath the whole or any part of it." (p. 142, lines 42 and 48; p. 381, l. 28.)

The former portion, he held, would follow the custom of the family, whilst the other portions would be regulated by the bequest of Rajah Gouree Shunkur, if he had made one, or, failing that, by Act I of 1869. "The succession," he adds, "to the personal property is independent of all special considerations, and must be regulated by Hindoo law and by family custom" (Record No. 1, p. 143, l. 9). Again he says, "So far as concerns the ancestral estate of personal movable property the will has no effect, for, over that, Rajah Gouree Shunkur had no testamentary power" (*id.*, 144, l. 19).

The same views are expressed in the judgment under appeal (*id.*, 380, 381).

Their Lordships concur with the Judicial Commissioner that the 8th paragraph of the Proclamation applied to that portion of the estates of Mourawan which belonged to the family at the time when Oude came under British rule, notwithstanding Chundun's name was inserted in that paragraph. Chundun died in 1854, long before the mutiny. He personally could not have been referred to in the 7th paragraph of the Proclamation as one of those whom the Governor-General declared it to be his intention to reward for their steadfast allegiance at a time when the authority of Government was partially overborne, and who had proved it by the support and assistance which they had given to British officers. But Gouree Shunkur was one of those who had given support and assistance to Government, and not only Gouree Shunkur, but also Sheo Pershad and other members of the joint family. The gomashtas of the several banking firms of the family were also loyal, and rendered good service to Government (Record 1, p. 279, l. 10).

It can scarcely be supposed that the Governor-General intended to injure any member of this loyal family, and by confiscation and regrant to transfer the beneficial interest in the joint estates of the whole family from the several members of it to a single member of the family for his own sole benefit.

As regards, therefore, the estates which were exempted from confiscation, the sunnud and summary settlements were a mere grant by Government to one member of the family of property which belonged to the family jointly. They could not of themselves affect the rights of the family.

As regards that part of the property granted to Gouree Shunkur which, if any, was not previously part of the family estates, it cannot be

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held to have been the separate self-acquired property of Gouree Shunkur within the meaning of the Hindoo law. It was granted as a reward for loyalty and for the support and assistance rendered to British officers; such services as those referred to in Gouree Shunkur's petition (Record No. 1, 279), could not have been rendered without the use of funds which must be presumed to have been those of the joint family.

This point, however, is not very material, for even if some part of the property was self-acquired by Rajah Gouree Shunkur, he, according to their Lordships' views, hereafter stated, transferred it to the family.

With regard to Act 1 of 1869 the Judicial Commissioner held that it did not confiscate or confer title in landed estate (Record 1, p. 379, l. 36). He says: "The preamble expressly recites that the title in talukas has already been conferred: the Act declares what in the sight of Government are 'talukas,' regulates the order of succession to such; and defines and, perhaps, creates certain special interests." Their Lordships, however, cannot concur with the Judicial Commissioner in his view that the Act did not confer title.

By Section 2 the word "talukdar" is defined; it is declared to mean "any person whose name is entered in the first of the lists mentioned in Section 8." Rajah Gouree Shunkur's name was entered in that list (Record No. 1, p. 122, l. 3; *id.* Supplement, p. 3, No. 19, p. 9, No. 2), and Section 10 made the list conclusive evidence that he was a talukdar within the meaning of the Act.

By Section 3 it was enacted that every talukdar with whom a summary settlement of the Government revenue was made between the 1st day of April 1858, and the 10th day of October 1859, or to whom, before the passing of the Act and subsequently to the 1st day of April 1858 a talukdary sunnud had been granted, should be deemed to have thereby acquired a permanent, heritable, and transferable right in the estate comprising the villages and lands named in the list attached to the agreement or cabulieut executed by such talukdar when the settlement was made, subject to all the conditions affecting the talukdar contained in the orders passed by the Governor-General of India on the 10th and 19th days of October 1859, and republished in the first schedule thereto annexed, and subject also to all the conditions contained in the sunnud under which the estate was held.

Section 4 is as follows:—

"Every person whose lands the Proclamation issued in Oude in the month of March, 1858, by order of the Governor-General of India, specially exempted from confiscation, and whose names are contained in the second schedule hereto annexed, shall be deemed to possess in the lands for which such person executed a cabulieut between the 1st day of April 1858, and the 1st day of April 1860, *the same right and title which he would have possessed thereto if he had acquired the same in the manner mentioned in Section 3; and he shall be deemed to hold the same subject to all the conditions affecting talukdars which are referred to in the said section, and to be a talukdar for all the purposes of this Act.*"

Gouree Shunkur's name was not contained in the second schedule annexed to the Act, but Chundun's was.

Summary settlements were made with Gouree Shunkur between the dates specified in Section 3; and a talukdary sunnud was granted to him before the passing of the Act, and subsequently to the 1st April 1858, viz., on the 11th December 1859, by which the Government bound itself to maintain him and his heirs as sole proprietors of the estate (Record No. 1, p. 21).

Chundun did not enter into a cabulieut for the lands to which the suit relates, but Gouree Shunkur did. It therefore appears to their Lordships that Gouree Shunkur came within Section 3 of the Act. If he did not, he came within Section 4. It makes no difference, however, in the result which is the section within which the case falls, for both sections confer the same right and title.

Their Lordships are consequently of opinion that Gouree Shunkur must, in consequence of the Act, be deemed to have *acquired a permanent, heritable and transferable right* in the estates to which the suit relates, being those which comprised the villages named in the lists attached to the agreements, or cabulieuts executed by him when the settlements of the different portions of the estates were made; and this, as regards both the villages which were, and those, if any, which were not, previously part of the family property.

They are, however, also of opinion that Gouree Shunkur had power by will or by alienation in his lifetime to transfer the estates which, by virtue of the Act, were not merely heritable, but transferable.

By Section 11, it was enacted that, subject to the provisions of the Act, and to all the conditions under which the estate was conferred by the British Government, every talukdar and grantee, and every heir and legatee of a talukdar and grantee, of sound mind and not a minor, should be competent to transfer the whole or any portion of his estate, or of his right and interest therein, during his lifetime, by sale, exchange, mortgage, lease, or gift, and to bequeath by his will to any person the whole or any portion of such estate, right, interest, &c.

The remainder of that section, and Sections 12 and 13, contain provisions relative to such transfers which do not apply to the present case.

Section 14 enacted that if any talukdar or grantee shall *heretofore have transferred or be-*

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queathed or if any talukdar or grantee, or his heir or legatee, shall hereafter transfer or bequeath, the whole or any portion of his estate, to another talukdar or grantee, or to a person who would have succeeded according to the provisions of this Act to the estate, or to a portion thereof if the transferor or testator had died without having made the transfer and intestate, the transferee or legatee and his heirs and legatees shall have the same rights and powers in regard to the property to which he or they may have become entitled under or by virtue of such transfer or bequest, and shall hold the same subject to the same conditions, and to the same rules of succession as the transferor or testator.

Then comes Section 15, *which is very important*, and which enacts that—

"If any talukdar or grantee *shall heretofore have transferred or bequeathed*, to any person not being a talukdar or grantee, the whole or any portion of his estate, and such person would not have succeeded according to the provisions of this Act to the estate or to a portion thereof if the transferor or testator had died without having made the transfer and intestate, the transfer of, and the succession to, the property so transferred or bequeathed *shall be regulated by the rules which would have governed the transfer of, and succession to, such property if the transferor or legatee had brought the same from a person not being a talukdar or grantee.*"

The next question is how and to what extent Rajah Gouree Shunkur exercised the power of alienation conferred by the Act.

All the Courts in the Oude suit, as well as the Subordinate Judge of Cawnpore, have given effect to the documents called the will of Rajah Gouree Shunkur; but they put different constructions upon them.

The following is a translation of one of the documents dated 7th February 1860, Record No. 1, page 28, l. 19:—

"I, Rajah Gouree Shunkur, Talukdar and Zemindar of Hurha, Targaon, &c., in the district of Oonao, who have received from the British Government the proprietary right of Hurha, Targaon, &c., in the district of Oonao, in perpetuity, have been requested by Government to submit an application on the subject of primogeniture, with a view that the taluka may not be split into pieces, as I would wish. Now, the custom that has been followed in my family, for generations past, is this—that the eldest member of the family continues to be the head, while the others remain obedient to him; but every one possesses a share in the taluka. Under the custom of the family the other brothers are at liberty to have their share separated, should they wish it. The head has no power, under the old custom, to alienate the estate without consulting every sharer. I, therefore, wish that the old custom of maintaining the share of each shareholder be preserved, in opposition to the one in accordance with which one member of the family is allowed to succeed."

The other documents applicable to property in other districts are similar in effect, though not in the identical words. (Record No. 1, p. 28, l. 44, and p. 29, and *id.* p. 438, &c.)

Other material documents are those called the tabular statement and Chundun's chit.

The document called the tabular statement, and the letter in which it was submitted, are at pages 30 and 31 (Record No. 1). The following are translations of the letter and tabular statement:—

"To the Tahsildar,

"Sir,

"I received your former letter, together with the form of a statement of succession, desiring me to fill in the columns, and also your latter communication, calling for the statement. As directed by you, the statement is herewith submitted, duly filled in.

"Pray make no objection to the entry, sons of Lallah Chotay Lall, and sons of Lallah Jankee Pershad, deceased.

"The object desired is attainable by such an entry.

"Yours faithfully,

"(Signed) Rajah Gouree Shunker,

"*Banker of Mourawan.*

"13*th May* 1860.

Statement Inclosed.

Name of Taluka.	Number of Persons in the Family fit to Succeed	Jumma of the Estate.	Name of Persons in favour of succession of one Member of the Family.	Name of persons against the succession of one Member of the Family.
Jubroulee, &c.	Sons of Lalla Chundun Lall, deceased:— 1. Son of 'Lalla Chotay Lall, deceased; 2. Rajah Gouree Shunker; 3. Lalla Behari Lall; 4. Lalla Kunhya Lall; 5. Son of Lalla Jankee Prosad. Sons of Lalla Gunga Prosad, deceased:— 1. Lalla Shiva Prosad: 2. Lalla Ram Sahoy.	...	...	Rajah Gouree Shunker.

"*Remarks.*—The following rule has prevailed with regard to succession in the family of Rajah Gouree Shunker:—The eldest son in the family is regarded as the head, with the consent of all the sharers, and the others remain subject to him; but all the sharers retain their shares, and in case of disagreement between them, each sharer is at liberty to have his share separated."

The translation of Chundun's chit is at page 10 (Record No. 1). It is as follows:—

"Let documents be drawn out, under the instructions herein conveyed, and then you will be at liberty to live together or separate from each other. Each sharer will take his share, half in money, and half in gold, silver and debts due from

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parties. Any member of the family may take me to live with him, or all the members may manage it, so that they may divide among themselves the expenses which may be incurred on account of the necessaries of my life.

" My brother Gunga Prasad ...	20,000
" Chotay Lall will get double share...	30,000
" Gouree Shunkur	15,000
" Behari Lall	15,000
" Kunhya Lall	15,000
" Jankee Prasad	15,000

" All the females and children should certainly go to the Ganges, and bathe there. They may go either to Nujuf Gurh or Cawnpore, or Bruhmawart.

" Any members wishing to live together may do so, while others may live separate, and pursue their occupation. Each member will supply his own family with food, clothing, and jewels. Marriages, &c., should be celebrated after consultation with all the members.

" Koonwar Soodee, 10th 1892 Sumbut, or 1243 Fusly."

In the Cawnpore suit the High Court held that none of the documents amounted to a will.

They said, " We have no hesitation in assenting to the contention that neither the reply as to the custom of primogeniture, nor the tabular statement which followed it, can be regarded as testamentary. They contain no devise or bequest, nor any language from which a devise or bequest can be inferred." And again: " It cannot be supposed that in replying to the inquiries made by the Deputy Commissioner the talukdars of Oude set themselves to make their wills. It appears to us that the Rajah Gouree Shunkur intended no more than to inform the authorities of the custom of inheritance prevailing in the family of which he was a member, and to indicate the persons interested as sharers of the family property. *Moreover, whatever may have been the power of disposal which the Rajah possessed over the property in Oude, which point it is not necessary for us to determine*, he neither had, nor does it appear that he assumed to have, any power to dispose of the property in suit," that is, the property in the North-Western Provinces. These remarks were very appropriate in the case before the High Court in the Cawnpore case. It is clear that the documents had no reference to property in the North-Western Provinces, and that they did not contain a bequest or testamentary disposition of any part of such property. But with regard to that part of the property in Oude, to which they related, the case is very different. That which was not a will in the ordinary sense of the word, might, in their Lordships' opinion, have amounted to a will within the definition of Act I of 1869. By Section 2 of that Act it is declared that the word " will" means " the legal declaration of the intention of the testator with respect to his property *affected by this Act*, which he desires to be carried into effect after his death." It appears to their Lordships that the document of the 14th February 1860, and the other documents, which were very similar, did declare the intention and wishes of Gouree Shunkur, which he wished to be carried into effect after his death with respect to all the estates which the Government had assumed to confer upon him by the sunnud, &c., including that part which was ancestral, as well as that which was granted to him for the first time. Gouree Shunkur, as an honest and just man, and as a conscientious Hindoo, did not wish that after his death the property which belonged to the family jointly should pass to his eldest son as his heir, and continue to descend according to the rules of primogeniture. He wished things to go on as before, and that that which had been joint family property should continue joint family property.

It appears, from the judgment of the Judicial Commissioner, that documents, such as those which have been called the will of Rajah Gouree Shunkur, have been treated and spoken of by the talukdars of Oude as their wills.

He says, Record No. 1, p. 381, l. 38:—

" In ordinary cases this could hardly be construed as a ' will,' for there is no direct allusion to the death of the executor, nor can it be said that there is a distinct direction as to the devolution of his property after his death.

" But in Oude it is a matter of notoriety that the letter to which these documents are answers were expressly intended to elicit and register the wishes of each talukdar as to the descent of his landed estate after his death, and the replies are to this day spoken of by talukdars as their will *when no other has been made*.

" Its form is immaterial *as it was made prior to the passing of Act I of* 1869, and the power of Hindoos to make even nuncupatory wills has been decided in repeated judgments submitted by the Lords of the Privy Council.

" I find that this document correctly describes the intention of the Rajah in respect to the devolution of his taluka after his death, and that it is correctly described as a ' will.' "

Their Lordships concur in this view. They go further, however, and are of opinion that the declaration in those documents of the wish of Gouree Shunkur, acted upon as it was by him and by the other members of the family in his lifetime, and coupled with the tabular statement, was evidence sufficient to prove an alienation *inter vivos*, which in Gouree Shunkur's lifetime transferred the property to the family, to be held by them as joint family property. No evidence was given to show that the rents and profits of the estate did not continue, even during the life of Gouree Shunkur, to be brought, like the other assets of the family, to the family treasury, for the use of the undivided family. In the Cawnpore case, Mohun Lall, one of the sons of Chotay, said, " Every one used to take out of the profits as much as he required." (Record

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No. 2, p. 145). In the tabular statement sent in May 1860, Rajah Gouree Shunkur entered his own name not alone, but with the other members of the family, as the persons fit to succeed: he could not have intended to devise to himself by a will or codicil—he clearly meant, by entering his own name as one of the sharers, to express his wish and intention that the estates should be held jointly during his own life as well as after his death. (Record No. 1, pp. 30, 31).

Their Lordships are of opinion that the transfer of the property to the joint family was complete in the lifetime of Gouree Shunkur, and that it was acted upon in his lifetime as well as after his death. Behari Lall and Kunhya Lall, and the other members of the family succeeded to the estates, not by inheritance, for they were not Gouree Shunkur's heirs, but by survivorship, and Behari Lall and Kunhya Lall, respectively, became managers, according to the custom of the family, and as they would have done if no change had been effected by Lord Canning's Proclamation, &c. The beneficial interest continued in all the surviving members of the joint family.

In his petition, dated 28th June 1867, Rajah Behari Lall stated that all the present members of the family acquiesced and consented that the tabular statement (in one part of the petition called a "testament," and in another "an instrument"), which was filed during Rajah Gouree Shunkur's incumbency, was binding and effectual. (Record No. 1, p. 323.)

No special mode of transfer is required by the Hindoo law, even a verbal transfer is sufficient.

It may be urged that Section 16 of the Act enacts that no transfer of any estate, or of any portion thereof, or of any interest therein, made by a talukdar or grantee, or by his heir or legatee, *under the provisions of this Act*, shall be valid unless made by an instrument in writing signed by the transferor and attested by two or more witnesses. But that section was not intended to be retrospective or to affect transfers made previously to the passing of the Act. Sections 14 and 15 speak of transfers "heretofore made," and it never could have been the intention of the legislature to render void sales or transfers made before the passing of the Act by one talukdar to another talukdar under Section 14, or by a talukdar to any other person under Section 15, if not made by a writing signed by the transferor in the presence of two or more witnesses. If Gouree Shunkur had in his lifetime sold the estate and conveyed it by deed to another talukdar, Act I of 1869, passed after Gouree's death, would not have rendered the sale void. Sections 17 and 18 are clearly not retrospective, and Section 19 applies only to future cases, and it provides expressly that nothing shall affect wills executed before the passing of the Act. Section 16 applies to transfers, and Section 19 to wills, but both sections use the words "*made under the provisions of the Act;*" they cannot be held to apply to a transfer made by deed, will, or otherwise nine years before the Act was passed.

For the reasons above stated, their Lordships are of opinion that the claim of the sons of Rajah Gouree Shunkur to exclude the other branches of the joint family from any share in the talukdary estate cannot be supported, and that the conclusion of the Judicial Commissioner in his first judgment to the effect that the same law of succession must be applied to the entire landed estate, and to the movable property, is correct. It is hardly necessary to remark that Ram Sahoy, if he seeks to take the benefit of the ruling, must bring into the common stock the talukdary property, which was ostensibly granted to his brother Sheo Pershad, or which stands in the name of Sheo Pershad, or of himself.

The next question is what is the rule of succession to be applied.

Upon the first hearing before the Deputy Commissioner, he rejected the claim of Ram Sahoy altogether, and awarded to the plaintiff one-fifth share of all the property as that to which he was entitled under the will of Rajah Gouree Shunkur. Upon appeal the Commissioner modified that decree, and, putting a different construction upon the so-called will, awarded to the plaintiff a one-seventh share of all the property, movable and immovable.

Upon special appeal to the Judicial Commissioner he remanded the case for the trial of certain issues of fact, of which the only important ones to be considered are the sixth and seventh. They are as follows :—

"6. What is the measure of the share of each party. In the personal property ? In the estate now found to be ancestral ? In the acquired estates ?

"7. What is the family custom as to succession ?" —(Record No. 1, p. 145.)

Under those issues fresh evidence was given as to Chundun's chit, which had been found by the Deputy Commissioner not to have been proved.

It is always dangerous to allow parties to make a new case, and to call fresh evidence upon an issue on which they have failed upon the evidence originally adduced in support of it, and more especially is it so in the Mofussil Courts in India. But the parties not only gave fresh evidence upon the issue as to Chundun's chit, but they were allowed to set up an entirely new case and to enter into evidence to prove that Ram Sahoy and other members of the family had actually signed copies of the letter and had agreed to be bound to take upon partition of the immovable estate, shares corresponding in extent with those specified in Chundun's chit, as to the 110,000 Rupees

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therein mentioned. That was a new case altogether, which had never been suggested or raised by any of the parties in either of the Lower Courts in Oude, or even before the Judicial Commissioner on appeal, and in support of that case witnesses who had been examined upon the first trial were examined *de novo*, and materially altered and added to their former evidence.

As the ultimate decision of the Judicial Commissioner after the remand turned upon Chundun's chit, their Lordships will proceed to consider the evidence given with reference to that document. Before doing so, however, it will be well to go back and refer with more particularity to the proceedings in the Oude suit.

The plaintiff claimed one-fifth of the whole property, movable and immovable, basing his claim on the will of Gouree Shunkur.

Hurpurshad claimed to be entitled, as the eldest son of Gouree Shunkur, to succeed to the whole of the Mourawan estate (Record No. 1, p. 75, l. 20), whilst the other sons of Gouree Shunkur contended that the wishes of Gouree, as expressed by the document (in one place called by them a will, and in another a deed), were that the property should be divided amongst all of his sons. (*id.*, p. 76, l. 9 and 11.) The only parties in the Oude suit who relied upon the paper called Chundun's chit were Rugburdyal, Mohun Lall, Ram Dyal, and Kashee Pershad, grandsons of Chotay Lall, and great grandsons of Chundun, and Balmokund and Banee Pershad, sons of Chotay and grandsons of Chundun. They said that the taluka could not, under the will of Behari Lall, be broken up (p. 77, l. 12), and they set up Chundun's chit merely as to the movable property, houses, and gardens. They never stated or alleged that any of the members of the family had signed copies of it or had assented to, or agreed to be bound by it. It was contrary to their case that it was intended to apply to any part of the immovable estate. Their pleader, Kali Pershad, stated, in the fifth ground of their defence, as follows:—

"According to a letter of Lalla Chundun Lall, Chotay Lall was entitled to one-third of the movable property, houses, and gardens. Plaintiff is therefore entitled to one-sixth." (Record No. 1, p. 77, l. 13). This was by putting Ram Sahoy out of the case altogether, and claiming to divide the movables amongst the five sons of Chundun and their descendants, and giving Chotay a double share under Chundun's chit. In this way they reduced the plaintiff's share in the movable property from a fifth to a sixth, and set up a claim for Chotay's decendants in the movables, houses, and gardens, to two-sixths or one-third, being a double share. Balmokund, by the same pleader, stated that he, and not the sons of Gouree Shunkur, was entitled to succession, meaning, no doubt, that he was entitled to the whole of the immovable estate as talukdar. (Record No. 1, p. 77, l. 44) That claim, however, has since been abandoned.

Ram Sahoy, the descendant of Gunga Pershad, contended that the plaintiff, as representing one of the five sons of Chundun, was entitled to a one-tenth share, that is to say, to one-fifth of a half, only, he himself claimed the other half, as representing Gunga Pershad's branch of the family. He was not originally made a defendant in the Oude suit, but he intervened and was allowed by the Deputy Commissioner to contest the plaintiff's claim only so far as it related to a share in the twenty-seven villages which stood in his name, leaving him the option of making good by a separate suit any further claim he might have (Record No. 1, p. 86, l. 41).

The only issue in the Oude suit in the Court of the Deputy Commissioner which raised any question as to Chundun's chit was the eleventh (Record No. 1, p. 87), and this had reference to the movable property only. The issue was as follows:—

"Are the descendants of Chotay Lall entitled to one-third of the movable property, houses and gardens," and the onus of this issue was stated to be on the descendants of Chotay Lall.

Upon that issue the Deputy Commissioner found that the alleged chit was not genuine, and very properly so upon the evidence then before him, for the original had been withdrawn and was not produced. It has already been stated that the Deputy Commissioner in *his* judgment before remand awarded the plaintiff one-fifth of the property, and that upon appeal by Ram Sahoy to the Commissioner that decree was modified and one-seventh awarded to the plaintiff.

The judgment of the Commissioner was delivered on the 7th May 1870, in Ram Sahoy's appeal only. On the 6th May, only the day before the Commissioner gave judgment in Ram Sahoy's appeal (Record No. 1, p. 120, l. 26), the defendants Balmokund and other descendants of Chotay, including Mohun Lall, presented another appeal (*id.* 108), and on the 12th May 1870, five days after the judgment of the Commissioner the defendants Ramchurn and others preferred a third appeal (Record, p. 118), both of the last two appeals being against the decision of the Deputy Commissioner of the 28th March 1870. The appeals appear to have been out of date (Act VIII of 1859, Section 333) unless there was great delay in granting a copy of the decree appealed against. Be this, however, as it may, the appeal of Balmokund and others was admitted and judgment was pronounced upon it by the Commissioner, who upheld the judgment he had given on Ram Sahoy's appeal.

One of the grounds of the appeal by Balmokund and other descendants of Chotay, includ-

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ing Mohun Lall, to the Commissioner from the decision of the Deputy Commissioner was, not that upon the evidence the Deputy Commissioner ought to have found in favour of Chundun's chit, but that they had had no opportunity of proving Chundun's chit put in evidence by them on the first hearing of the suit. (Record No. 1, p. 109, l. 34, and p. 121, l. 21).

The Commissioner expressed no opinion upon the point though he stated generally that nothing had been advanced to shake the propriety of his decree in the other appeal, which in fact gave no effect to Chundun's chit.

From that decision a special appeal was preferred to the Judicial Commissioner by Balmokund, Mohun Lall and others, in which they set up a ground of appeal as regards Chundun's chit similar to that which had been stated in their appeal to the Commissioner (Record No. 1, p. 136, l. 4); but they still claimed in their appeal the right for Balmokund, as the eldest member of Chundun's family, to succeed to the whole of the immovable estate (*id.* p. 135, l. 37). With regard to the custom of the family and Chundun's chit, they said, "The appellants have had no opportunity to produce evidence *with reference to the custom of the family*, the will of Rajah Behari Lall, *and the writing of Chundun, and to file the latter*" (Record No. 1, p. 136, l. 4). The Judicial Commissioner expressed no opinion with reference to that ground of appeal, though he ought to have done so. If he had expressed a judgment upon the point, he ought to have held on special appeal that, as a matter of law, there was nothing in the objection. The appellants had not, nor had any one of the parties to the suit, set up a custom in the family with regard to the extent of shares to which brothers and the decendants of deceased brothers were entitled on partition of immovable estate. They had every opportunity to do so if they wished, and to prove it, if they could. With regard to Chundun's chit, they not only had an opportunity of filing it, but they actually did file it in the Court of the Deputy Commissioner, but they afterwards withdrew it before the hearing (Record 1, p. 96, l. 15); and they also gave such evidence as they thought fit respecting it, but did not produce the original.

Sheo Churn, on the first trial before the Deputy Commissioner, stated that two copies of the letter, that is, Chundun's chit, had been made and signed by Hurpurshad, Behari Lall, Ram Narian, Kunhya Lall and Madho Pershad, and he afterwards added, and by Baboo Ram Sahoy (*id.* p. 84).

Mungul Sing said (*id.* p. 84):—

"I was sitting near the Baradurree one morning in Magh, 1275 F., Rajah Behari Lall, Ram Churn, Beni Pershaud, Mohun Lall, Hupershad, Ram Sahai were there; Belmokund was having his hair dressed at a little distance. They all agreed to abide by Lalla Chundun Lall's letter, and went away. A Hindee chit was written (he does not say a copy of Chundun's chit was made) by Rajah Beharee Lall, and Kunya Lall, Ram Sahai, Beni Pershad, Hurpershad, Ram Churn, Madho Lall signed it. I cannot write or read.

"*Cross-examination.*—Hurpershad took this letter away. Beni Pershad took the original of Chundun Lall. Ram Sahai took away another. I was there by chance. I never was sent for before."

As regards the evidence given after the remand respecting Chundun's chit, their Lordships consider that the Deputy Commissioner was correct in stating that, with the exception of the testimony of Beni Pershad and Deenanath, the additional evidence (*id.* p. 351 to 357), merely goes to show the existence of the document (*id.* p. 373, l. 3). That fact is now admitted. Deenanath's evidence is at p. 358.

He says at l. 17: "I have seen with Beni Pershad and with Hurpurshad a chit purporting to be written by Chundun Lall a year before I entered his service. I saw the letter during Chundun's life, and he spoke to me about it, and said he wished Gunga Pershad's sons to get 20,000 Rupees, Chotay Lall's 30,000 Rupees; and the others 15,000 Rupees each (Oude Record, p. 358, l. 18).

This shows that Chundun's intention when he wrote the document was that the several members of the family should each receive the particular amount set opposite to his name. Chundun, certainly, according to that evidence, does not appear at that time to have inserted the amounts as expressing the proportions in which the property of the family was divisible by custom or was at all times in future to be divided if partition should take place. Deenanath, however, added that the conversation was casual, and in answer to the Court said "In the conversation above described I understood from Chundun Lall that he meant the whole property to be divided amongst the kinsmen in those proportions; the word 'Ursalha' was used by him. The conversation arose at the time of Golam Ali Khan driving the family across the Ganges in 1255 Fusly." That was about the year 1848, and the conversation applied to the property as it existed at that time.

The statement as to what the witness understood from Chundun in 1848 to be his meaning is too loose and unsatisfactory to be acted upon; it was never mentioned or even alluded to either in his examination or cross-examination at the first trial; is quite at variance with the statement in his examination-in-chief that Chundun had told him that he wished Gunga Pershad's sons to get 20,000 Rupees, Chotay Lall's 30,000 Rupees, and the others 15,000 Rupees each, coupled with his statement in cross-examination that Chundun's property consisted of 400,000 or 500,000 Rupees when the paper was written.

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The Deputy Commissioner in his judgment, referring to this statement of Deenanath, says :—" This evidence is not sufficient to justify the Court in attaching to the document a meaning different from that on the face of it," and their Lordships entirely agree with him.

Deenanath did not, on his examination after remand in the Oude suit, speak to the fact of copies having been made or signed by other members of the family. His evidence was given on the 19th August, and it will be seen that, when examined before the Subordinate Judge in the Cawnpore suit on the 10th March 1870, he swore not only that copies had been made and signed, but that after finishing the copy the following sentence was added thereto: " Every one should divide and take his share, according to the letter of Lalla Sahib" (Record No. 2, p. 148). He is the only witness who spoke to that fact. Beni Pershad, one of the sons of Chotay, who was interested in acquiring a double share for his branch of the family, said :—

" Two copies of the letter were made by Behari; one copy was given to Ram Sahoy, and the other to the descendants of Chundun;" but he did not state that any sentence was added thereto, or that the copies were signed by any of the members of the family, though he is one of the persons who was said by Mongul Sing to have signed them. He went on :— " The chit of Chundun should regulate the partition of the property of every description" (368, l. 28). But this was mere matter of opinion. He did not at that time state that any agreement to the effect was ever entered into by the family, and it is quite at variance with the defence which he had set up.

The Deputy Commissioner, in his judgment on remand, found that there was no ascertained custom as to partition (Record, No. 1, p. 369, l. 5), and putting Chundun's chit out of the question their Lordships are of opinion that that finding was correct.

With respect to Chundun's chit, the Deputy Commissioner, after giving his reasons in detail, and amongst others that the original document had not been produced, said :—" I am still of opinion that the proof of the genuineness of the document is insufficient; and even admitting its genuineness, I cannot set any value upon it." He said :—

" It has been found that Chundun Lall and Gunga Pershad were a joint undivided family, and hence Chundun Lall had no legal power to deal with more than his own share, *i.e.*, one-half of the joint property.

" For these reasons I set aside altogether *the so-called writing of Chundun Lall.* It has been found above that no ascertained family custom respecting partition has been established, and I find, in consequence, on the issue, that the measure of the share of each party *in the personal property* is Hindoo law, under which *Babu Ram Suhai will take one-half (five-tenths), and the sons of Chundun Lall, or their representatives,* each one-tenth. In the ancestral estate, and that acquired up to the 14th February 1856, I find that the measure of the share of each party is also Hindoo law, and that under it Babu Ram Suhai will take one-half, and the sons of Chundun Lall, or their representatives, each one-tenth. I find that in the acquired estate of Babu Sheo Pershad, *i.e.*, Bunthra Taluka, Babu Ram Suhai is entitled to the sole ownership, the measure of his share being Act I, 1869, and in the acquired estate or ' grant' of Gouri Shunker, as previously explained, I find that the measure of the share of each of the parties is the will of Rajah Gouri Shunker, under which the sons of Chundun Lall, or their representatives, and Babu Ram Suhai, will each take one-sixth."

The finding of the Deputy Commissioner, taken on remand, afterwards went before the Judicial Commissioner. He found that Chundun's chit was genuine, not that all or any of the parties had signed a copy or copies of it, or had agreed to be bound by it; but he considered that the document set forth the custom under which the ancestral estate had been held, and to which both Rajah Gouree Shunker and Baboo Sheo Pershad in their wills, and Rajah Behari Lall, in his petition, alluded.

The following is an extract from his judgment, p. 384, l. 23, Record 1 :—

" The Court of First Instance would apply to the ordinary Hindoo law, but it appears to me that such a ruling would not only be in direct contravention of the repeated declaration of this family for many years, that the joint estate was suject to family custom; but in direct opposition to the expressed wishes of the two grantees, Rajah Gouree Shunker and Baboo Sheo Pershad, in respect to the estates over which they respectively had a power of testamentary disposition.

" Had these latter intended that their grants should be divided according to Hindoo law, nothing could have been easier or more natural than for them to say so. But what they do say is, ' We have a custom under which we now hold family property, and by that custom we wish the succession to our acquired estate to be regulated.'

" I think it impossible for any member of the family to say that the division should be by law, rather than by family custom.

" The difficulty is to decide what is that custom.

" The two instances of separation in previous generations do not assist us, for they are evidently not regulated by a common law, but were friendly agreements, the amounts given off being determined amicably, and based probably on facts known to the parties concerned, and to no one else.

" It is hardly disputed that the greater portion of the property held prior to the recent grants was acquired by Chundun Lall and his eldest son, Chotay Lall; *and I myself can speak, from many years' experience, to the veneration in which the Burra Lalla (Chundun Lall) was held by the joint family, and to the fact that all agreed that though the family lived and hoped to continue as undivided, yet that Chundun Lall had made a division prior to his demise, which was preserved in the family archives, and recognized by them.*

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"A paper, purporting to be a copy of the record of the division so made in Chundun Lall's own handwriting, has been produced in this suit, and it is admitted that it is a copy of the document filed in the Court of Cawnpore.

"Some ridicule has been cast upon this paper, and the Court of First Instance deemed it unnecessary to inquire into its genuineness or its validity.

"The ridicule was misplaced, for the points which, to the ignorant, appear ridiculous, are precisely those which prove the paper to be a genuine production of the patriarchal head of an undivided Hindoo family.

"In this Court there has been no real attempt to deny its genuineness, nor evidence offered to refute it, and as it has been found by the highest Appellate Court to be genuine in a suit between some of those parties in respect to properties held by them in the North-Western Provinces, and not subject to the special law of Oude, I think it unnecessary to remand this case again for trial of that issue, and, under my special power of review, I find that the document produced as Chundun Lall's is genuine.

"Finding that, I have no doubt but that that document sets forth the custom under which the ancestral estate has been held, and to which both Rajah Gouree Shunkur and Baboo Sheo Pershad in their wills, and Rajah Behari Lall, in his petition, allude."

He then declared his finding on the several issues directed on the remand, and on the sixth and seventh. He said, on the sixth, "I find that the measure of the division of the personal property, the ancestral and the several acquired estates, including the Bunthra taluka, is the custom of the family; and on the seventh, that the family custom is set forth in the writing of Lalla Chundun Lall, and that by it there falls of the entire estate divided into 22 portions, to the heirs of Gunga Pershad, 4 portions; to the heirs of Chotay Lall, 6 portions; to the heirs of Rajah Gouree Shunkur, 3 portions; to the heirs of Behari Lall, 3 portions; to the heirs of Kunhya Lall, 3 portions; to the heirs of Jankee Pershad, 3 portions."

And he concludes thus:—

"I therefore find that plaintiff, Sheo Dyal, as the only son of Lalla Kunhya Lall, is entitled to a share equal to three out of twenty-two equal portions of the entire estate, and cancelling the decrees of the Commissioner of Lucknow, dated 7th May and 2nd June 1870 (as before), I amend, as above, the decree of the Deputy Commissioner of Lucknow, dated 28th March 1870, said share to be enjoyed by said Sheo Dyal, subject to and in accordance with the will of Rajah Gouree Shunkur, deceased; and, considering the courteous and liberal manner in which the advocates of all parties have in this Court consented to the arrangement which enables the interests of all concerned to be determined in one judgment, I rule that when finally taxed in this Court all the costs in all the Courts in this case shall be costs against the estate."

The finding upon the seventh issue is altogether at variance with the cases set up by the several defendants in the suit, none of whom—as before observed—with the exception of the descendants of Chotay Lall, ever relied upon Chundun's chit, and they, only as regards the movable property.

The genuineness of the document is now admitted, but it does not of itself prove a custom.

A custom is a rule which in a particular family or in a particular district, has from long usage obtained the force of law. It must be ancient, certain, and reasonable, and being in derogation of the general rules of law, must be construed strictly. But Chundun's chit did not allude to or prove a usage in the family, or profess to lay down a certain definite rule which could be applied to any other state of facts than that which existed at the time it was written. It was not, and could not be, acted upon or applied to all cases of partition amongst brothers or descendants of brothers. It was a mere proposal for the division of 110,000 Rupees amongst certain then existing members of the family. What general rule can be extracted from it? Is it that in all cases where there are two brothers, the eldest having five sons, shall take nothing (for that was the case as to Chundun, by his own chit), that his eldest son shall take six-twentyseconds or three-elevenths, the rest of his sons three-twentyseconds each, and his brother four-twentyseconds, and what is to be the case where there are more than two brothers or the descendants of more than two? Their Lordships are of opinion that Chundun's chit did not declare, was not intended to declare, and was not evidence of, a valid family custom. There was no evidence in the Oude case of an agreement by which the parties bound themselves to act upon it on any future partition of the family property, movable or immovable. The Judicial Commissioner did not rest his judgment upon the fact that an agreement between the parties had been proved, but upon the fact that Chundun's chit set forth a custom under which the ancestral estates had been held, and to which he stated Rajah Gouree Shunkur by his will alluded. He referred to his own experience with regard to the veneration in which Chundun was held, and to his knowledge that the family had recognized a division which Chundun, prior to his demise, had made.

It ought to be known, and their Lordships wish it to be distinctly understood, that a Judge cannot, without giving evidence as a witness, import into a case his own knowledge of particular facts. If the means of knowledge of the Judicial Commissioner of the facts spoken to by him in his judgment, as depending upon his own knowledge, were capable of being tested, it would probably turn out that it depended upon mere rumour or hearsay, and that his evidence as to those facts would not have been admissible if he had been examined as a witness. But even if the Commissioner's statement of facts

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from his own knowledge be taken as evidence, Chundun's chit did not establish a custom as to the extent of shares upon partition, especially as regards immovable property. As to such property the terms of it were not applicable. It expressly says, "Each sharer will take his share half in money and half in gold, silver, and debts due," and if the translation in the Cawnpore case is to be relied upon, it says, "half the estate consists of cash, and the other half of silver, gold, and debts" (Record 2, p. 94); which shows that it was intended to apply only to property of that description.

The Judicial Commissioner not only found that Chundun's chit set forth the custom as to the shares in which the family property was divisible, but he interpreted the documents called Gouree Shunkur's will, and the tabular statement, as referring to a family custom by which the extent of the shares of the different members of the family was regulated. Their Lordships do not put that construction upon those documents. No such custom was set up by any of the parties to the suit in answer to the plaintiff's claim. The custom referred to in the documents called a will was merely that "the eldest member of the family continues to be the head;" "that every one possesses a share; that the other brothers are at liberty to have their shares separated if they wish it; that the head has no power to alienate without consulting every shareholder;" and a wish was expressed that the old custom of maintaining the share of each shareholder should be preserved in opposition to the rule of primogeniture. But there is no allusion to any custom under which the different members of the family were entitled upon partition to shares other than those provided by the rules of the Mitacshara.

Deenanath, in his evidence, says, "The custom of the family was that the eldest member had the direction." Gouree Shunkur did not state in the tabular statement, any more than in the documents called a will, that there was a custom as to the extent of the shares to which the several members were entitled upon partition. In the tabular statement he divides the members of the family fit to succeed under two heads, "the sons of Chundun" and "the sons of Gunga Pershad." He does not number them from one to seven; but he numbers Chundun's sons from one to five under one heading, and Gunga's sons one and two under the other; he puts himself down as one of the five, and inserts grandsons in the place of deceased sons, thus: "The sons of Chotay Lall, deceased," and "the son of Lalla Jankee Pershad, deceased." He does not state that Chotay's sons will take two shares, but puts them down as representing their father as one of the sons of Chundun; and he also puts down Jankee Pershad's only son as representing his father, as another of the sons of Chundun.

The entry is as follows:—

Sons of Lalla Chundun Lall, deceased:

1. Sons of Lalla Chotay Lall, deceased.
2. Rajah Gouree Shunkur.
3. Lalla Behari Lall.
4. Lalla Kunhya Lall.
5. Son of Lalla Jankee Pershad.

Sons of Lalla Gunga Pershad, deceased:

1. Lalla Shiva Prosad.
2. Lalla Ram Sahoy.

See also tabular statement, Record No. 1, p. 71, in which the words "descendants of Chotay Lall" are used instead of the words "sons of Chotay Lall."

Their Lordships consider that the proper interpretation of that document is that Gouree Shunkur considered, represented, and declared that it was his wish and intention that the property should be divisible *per stirpes*, and that is clearly the mode in which, in the absence of a family custom, the property being joint, would have been divisible under the Mitacshara. See the "Mitacshara" on Inheritance, Chapter 1, Section 5, para 12.

It is not likely that Gouree Shunkur, who had had the sunnud granted to him, and been allowed to engage for the Government revenue, intended to say, and it is clear that he did not say, that it was his wish that his nephews, Chotay's sons, as representing their father, were entitled, by custom or otherwise, to a share double the amount of that to which he himself was entitled. He certainly did not refer to Chundun's chit, and he could not have referred to the copies which are alleged to have been made and signed after his death.

The Judicial Commissioner's judgment as to what was the nature and extent of the custom is founded entirely on Chundun's chit. The custom spoken of by Rajah Gouree Shunkur in the documents called his will, is a custom said to have existed in his family for generations past. There certainly was no evidence of any partition in the family in which the property had been divided in the proportions specified in that document. The evidence, such as it was, was all the other way. It showed, so far as it went, that upon the partition between Chundun and Gunga Pershad and Moonnoo each took one-third. See Runjeet Sing's evidence (Record No. 1, p. 352, l. 7; *id.*, l. 20, p. 353). Ram Sahoy swore that Rajah Behari Lall told him that the documents showed that upon the separation of Moonnoo two-thirds of the property was reserved for Chundun and Gunga Pershad (Record No. 2, Supplement, p. 4). Deenanath, in his evidence, says, "when Jabboo separated he got a 4 annas share, and Chundun 12 annas of joint property. I have often heard this. When Moonnoo separated, out of 4 annas he got 1 anna 3 pie; Gunga, 1 anna 3 pie; and Chundun, 1 anna 6 pie. The 12 annas was

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not divided, it was left to meet expenses of the business."

The evidence in the Oude suit cannot be supplemented by that which was given in the Cawnpore suit in December 1870, long after the final decision of the Judicial Commissioner, of October 1870, was pronounced.

Reliance was placed upon Ram Sahoy's letters, as showing his own admission that he had no right to any share in the family estate. It cannot now be disputed that he is entitled to a share, though the extent to which he is entitled is a matter in dispute. Their Lordships agree with the view which the High Court took of those letters. They consider that, regard being had to the circumstances, an admission that he was not entitled to anything cannot be fairly drawn from them. He probably was under the impression at the time they were written that by virtue of Lord Canning's Proclamation, and the sunnud which had been issued, his beneficial interest as a sharer had been confiscated, and that Behari was the beneficial owner of the whole of Mourawan. The letters, if they amount to an admission at all, amount to an admission that he was not entitled to any portion of the Mourawan estates, they certainly cannot be evidence to show that he was entitled to only two-elevenths of it.

Their Lordships having decided that the property which was granted to Rajah Gouree Shunkur by sunnud, &c., was transferred by him to the family to be held as joint family property, the whole of the property in dispute in both the suits must be governed by the same rules. Their Lordships are of opinion that neither by custom, usage, contract, nor by any other means, has the property in dispute in the Oude suit at any time become divisible upon partition in any other manner or in any other shares than according to the rules of the Mitacshara. They are of opinion that the finding of the Judicial Commissioner on the sixth and seventh issues, that the measure of division of the personal property, the ancestral and the several acquired estates, including the Bunthra estate, is the custom of the family, and that that family custom is set forth in the writing of Chundun Lall, and his decree founded upon that finding are erroneous, and that the property must be divided according to the rules of the Mitacshara. There is not sufficient evidence to warrant a finding that Ram Sahoy was to take the Bunthra estate and the twenty-seven villages as his share of the property; and their Lordships are of opinion that the twenty-seven villages must be held to form part of the joint family estate, and must accordingly be divided as part of it.

It was agreed at the hearing of the appeals that their Lordships should decide whether the Bunthra estate is part of the joint family property, and is divisible in the same manner as the Mourawan estate. They are of opinion that it is. Sheo Pershad to whom it was granted, having signed documents similar to those which were signed by Gouree Shunkur as to the Mourawan estates (Record No. 1, p. 27, l. 30), Bunthra became part of the undivided family estate.

With regard to the property which is the subject of the Cawnpore suit, their Lordships are of opinion that Chundun's chit does not apply to it; and that it is not satisfactorily proved that the members of the family ever agreed that upon partition it should be divided in the proportions specified in Chundun's chit with respect to the 110,000 Rupees therein mentioned.

Banee Pershad's evidence in the Cawnpore suit, given on the 19th December 1870 (Supplemental Record in that suit, p. 2), is very different from that which he had previously given on the 23rd August 1870 in the Oude suit after the remand.

He was greatly interested in the result as one of the descendants of Chotay Lall, and his evidence in the Cawnpore suit was given after the last judgment of the Judicial Commissioner had been pronounced on the 29th October in that year.

He then stated for the first time that copies of Chundun's chit were signed by six members of the family, that is to say, by the eldest son of each stock.

But even that would fall short of proving that they had agreed that upon any future partition of immovable property, their shares should be adjusted in the same proportions as those in which the 110,000 Rupees mentioned in Chundun's chit were to be divided. None of the witnesses corroborated the evidence of Deenanath given in the Cawnpore suit (Record No. 2, p. 148), that an additional sentence was added to the copies of Chundun's chit which the parties are said to have signed.

Chundun's chit had reference only to movable property, and, without some addition, could not be applied to the partition of immovable property.

Banee Pershad went on to say that the signed copies were delivered, one to Hurpurshad, and one to Ram Sahoy (Supplemental Record, Cawnpore case, p. 2, l. 18), the persons above all others whom it was necessary to bind by them. The story is most improbable. Ram Sahoy (Record No. 2, Supplement, p. 4) swore that an arrangement was come to by which Bunthra and other property was to be taken by him as his share, and in this he was corroborated by Banee Pershad. The latter, after stating that copies of Chundun's chit were

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signed, said "After this Ram Sahoy got the twenty-seven villages in Oude, and took the profits. Ram Sahoy took the twenty-seven villages in accordance with the arrangement. The chitta on account of the whole estate was not made up, but these villages were given to Ram Sahoy to receive the full profits, while the remaining villages continued to be attached to the Koothee at Oonao (*id.* Supplemental Record, p. 2, l. 25, &c.).

Further he said Rajah Behari did not sign the paper which I have deposed was drawn up in his lifetime, he wrote the copies and his son signed it. (*id.* p. 3, l. 1.)

Again "at the meeting of the family at which the document executed by all of us was prepared, there was no mention made of any other paper but the document of Chundun."

Hurpurshad denied that a copy of Chundun's chit was signed by the family. (Record No. 2, p. 180).

Ram Narain said he did not know whether he had ever signed such a paper. He said "If I see the paper I can say," but none was produced.

Mohun Lall who was interested in obtaining a double share for the descendants of Chotay, of whom he was one, on his first examination before the Subordinate Judge (Record No. 2, p. 143), did not corroborate the other witnesses as to the delivery of the signed copies to Hurpurshad, and Ram Sahoy respectively, but he corroborated Ram Sahoy and Ram Pershad as to an agreement having been come to by which Ram Sahoy was to take the twenty-seven villages, &c., in lieu of his share. He said in his evidence, taken 18th March 1870, (Record No. 2, p. 146, l. 3) "about two and a half or three years ago Rajah Behari Lall, Hurpurshad, and Ram Pershad were looking at the document —*i.e.* Chundun's chit—and I was present there," but he does not say that copies were made or signed by any of the family.

Deenanath in his first deposition in the Cawnpore suit (Record No. 2, p. 148) said the copies were signed in 1274 Fusly, which would be about the time above mentioned by Mohun Lall. In his deposition in the Oude suit after remand (Record No. 1, p. 358) he speaks of the chit, and not of the copies. In his examination before the High Court after adjournment, he said the copies were made in 1275 Fusly.

Mohun Lall in his deposition taken on 7th December 1870, afterthe adjournment, says, "I first saw it about three years ago," that would be in 1867.

Further, in his first examination in the Cawnpore suit, Mohun Lall, speaking of Chundun's chit, said (Record No. 2, p. 143, l. 29):—"It is in the hand-writing of Chundun;" and he went on—"*Subsequently in the time of Rajah Behari Lall a partition deed was executed by the members of the family, and signed by all of them.* Rajah Kunhya Lall, Baboo Ram Sahoy, Lalla Balmokund, Madho Pershad, Hurpurshad and Ram Narain attached their signatures to the document. It is probably with some of the members of the family" [here some of the words are omitted, probably "it was agreed that the family"] "should divide the property according to the directions of Lalla Chundun Lall, contained therein." Here he speaks of a deed of partition, which was probably with some of the members of the family. He could not refer to the copies of Chundun's chit which, in his examination after adjournment by the High Court he said were given, one to Hurpurshad and one to Ram Sahoy (Record No. 2, p. 182). He proceeded:—"Leaving out the property in Oude, the plaintiff, that is Ram Sahoy, *is entitled to those estates which are situate in Cawnpore and Futtehpore districts,* and in respect of which his name is entered in the register. I mean, that the plaintiff's share is equal to all the estates in respect of which his name has been recorded in in conformity with the letter executed by Lalla Chundun Lall. The plaintiff's share in the firm is, in my opinion, equal to two-elevenths, according to the letter referred to above," &c. Again he says (p. 144):—"In the petition of Rajah Behari Lall, bearing order, dated the 14th January 1868, which was presented to the Deputy Commissioner of Oonao, it is stated that the entry of the names should be effected in conformity with the Memorandum of Lalla Chundun Lall. The Memorandum referred to therein is the document marked C, (Chundun's chit), and the *Razeenamah or agreement mentioned therein is the agreement of which I have spoken above.* It was in conformity with this petition of Behari Lall, that is, in compliance with the provisions contained therein, that the plaintiff caused his name to be entered in column 9 of the Revenue Register of the district of Oonao in respect of the twenty-seven villages."

The Hight Court, in their first judgment, speaking of the agreement mentioned in the petition of Behari Lall of the 9th February 1868, say:—

"There is other evidence to show that such an agreement was made. Mohun Lall deposed that a deed of agreement was drawn up in the lifetime of Behari Lall, and signed by the members of the family, including the plaintiff. Deenanath, the head gomashta of the firm at Mourawan, states that Behari Lall sent to Hurpurshad, who had the key of the cash room, for the paper drawn up by Chundun Lall in October 1835, and had a copy made of it which was signed by all, it being agreed that a division of the property should be

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made in accordance with its provisions. Sheo Churn Lall states that the copy was made in his presence, and signed by all the members of the family. Shunker Buksh deposes that he heard from the plaintiff that Behari Lall had recently written a paper which was signed by all parties; and Mahadeo deposes that the plaintiff informed him on two occasions that he would take his share in accordance with the paper written by Chundun Lall."

Again—

"It is much to be regretted that the Court of First Instance did not examine the plaintiff as to the making of the agreement to which the witness referred; and if the Court had been satisfied that such an agreement was in fact made and reduced to writing, it should have called upon the parties to produce it, for it would have had a material bearing on the plea of the defendants, that the plaintiff had assented to the arrangement" (see Record No. 2, p. 178, l. 36; and p. 179).

Further they say:—

"There remains only the question,—was the principle of division indicated in the paper written by Chundun Lall assented to by the plaintiff, or those from whom he claims, or was there any other arrangement assented to, with respect to the division of the property, at variance with the ordinary rules which govern the partition of joint property? This issue was not distinctly raised in the Court below; and although there is some evidence on the record on which we might determine it, to enable us to do so satisfactorily, we deem it essential *that the agreement to which reference has been made by several witnesses as having been prepared in the lifetime of the Rajah Behari Lall, should be called for, and, if it exists, be put in evidence.* At present we have only secondary evidence of its contents, and, although no objection was taken to its admission in the Court below, we hesitate to act upon it until we are assured that no better evidence exists. We, therefore, call upon the defendants to *produce the document to which we have referred, and to give proof of its identity with that spoken to by the witnesses;* and if the plaintiff desires to contradict the evidence of the execution of the document which may be adduced by the defendants, he is at liberty to tender himself for examination."—(Record No 2, p. 279, l. 21.)

The evidence of Mohun Lall (Record 2, p. 143) and of Beni Pershad appears to refer to a document containing an arrangement by which Ram Sahoy was to take the twenty-seven villages, &c,, and probably, according to Beni Pershad, Bunthra and other property as his share. The document may have referred in terms to Chundun's chit, and for these reasons, copies of it may have been made and signed by the family for identification. If the parties intended that all the property should be divided in the proportions mentioned in Chundun's chit, it is improbable that they should have signed only copies of the chit when it referred to specific movable and not to immovable property.

In their second judgment, delivered on the 21st August 1871, the High Court say: "We adjourned this case in order to obtain the production of the copies of the document alleged to have been written by Lalla Chundun Lall in October 1835, which, as we observed in the former part of our judgment, was deposed to by several witnesses. We have, however, failed to obtain its production."

In their former judgment the Court stated that they adjourned for the production of the agreement spoken to by Mohun Lall, not merely for the production of the copies of Chundun's chit. The defendants did not produce the deed of agreement, nor either of the copies of Chundun's chit, which were said to have been signed; nor did they sufficiently account for the non-production of them if they existed. The High Court did not find that it was out of the power of the defendants to produce the agreement or the alleged copies of Chundun's chit, and unless that was the case there was no excuse for Chotay's descendants not producing them if they existed. The issue as to whether a rule for partition of the joint family property, other than that provided by the Hindoo law was agreed upon, was entirely new. None of the defendants set up as a defence that a special rule for partition had ever been fixed by custom or agreement, or that any arragement had ever been come to by the family to divide the property in the proportions fixed by Chundun's chit with reference to the 110,000 Rupees mentioned in it. Chotay Lall's descendants set up quite a different case, viz., that the property was all Chundun's, and that Chundun had by his chit voluntarily assigned to Ram Sahoy a two-eleventh share in some of the property. Hurpurshad and others of the defendants also set up that, excluding the estates granted by Government, which belonged to those to whom they were granted, the descendants of Chundun were entitled to the whole of the property, and that the plaintiff, Ram Sahoy, had no right to any share in it. (See Record No. 2, pp. 10, 11, 12).

The High Court, although they had failed to obtain production of the copies of Chundun's chit, or the agreement spoken to by Mohun Lall, to which they alluded in their first judgment (Record No. 2, p. 178), allowed several of the parties and other witnesses to be examined not merely for the purpose of accounting for the non-production, but as to the fact that such documents had been executed. It was the interest of Hurpurshad to show that Ram Sahoy was not entitled to a half share, and for that purpose to produce the document, if it ever existed, and had been delivered to them. But he upon his oath denied it altogether.

The High Court remarked that they could not say that any of the witnesses gave their

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evidence in a manner which impressed them very favourably.

In a case of conflicting evidence of witnesses who do not commend themselves by the manner in which they give their evidence it is a safe rule to look to the conduct of the parties. In the present case the High Court did not attach sufficient weight to the conduct of the parties, nor confine them to the defences set up by their written statements, but they suggested a rule for the partition of that of which the parties alleged that the plaintiff had no right to a share (Record No. 2, pp. 11, 12, &c.) They not only did that, but they allowed witnesses who had been examined before to be recalled and examined *de novo*, and thereby enabled them to amend their former evidence. If all the heads of the several branches of the family, including Ram Sahoy, the plaintiff in the Cawnpore suit, Sheo Dyal, the plaintiff in the Oude suit, Hurpurshad, who claimed the whole of Mourawan, and Balmokund who made a similar claim, had in 1868 agreed that the whole property, movable and immovable, should be divided in the same proportions as the 110,000 Rupees mentioned in Chundun's chit, their conduct in making claims and setting up defences such as they did in the Oude case in 1869, and in the Cawnpore case in 1869 and 1870, and in endeavouring to exclude Ram Sahoy from any share in the property, was wholly inconsistent with the alleged agreement. If the Court intended to call for fresh evidence, they ought to have recorded their reasons for doing so. This is a rule laid down by Act VIII of 1859, and is one which this Tribunal has frequently held ought to be strictly adhered to. But the Court did not adjourn the case for the purpose of taking further evidence and allowing witnesses who had been examined to be recalled and to amend their former evidence, but simply for the production of a document, with liberty to call witnesses to prove its identity. Even this was a course which ought not to have been adopted. The case set up was entirely new, and there was no reason to give the parties an opportunity of producing a document upon which they had not relied in their claims or defences, and which, if they had relied upon it, they ought, according to the provisions of Act VIII of 1859, to have filed with their other exhibits, unless they could prove that the document was not in their possession.

Their Lordships are of opinion that the High Court were in error, after adjourning the case, as they did, for the production of a document, in allowing witnesses and several of the parties who were interested in the result, and had been previously examined, to be recalled, and to add to and vary the evidence which they had previously given, in order to prove a case which they had not set up.

Their Lordships also think that the conclusion at which the High Court arrived upon the evidence, in the absence of the production of the documents for the production of which they had adjourned the case, was also erroneous.

Upon the whole their Lordships are of opinion that there was no custom in the family nor any agreement proved which disentitled the several members of the faimly to receive, on partition of the joint family property, the shares to which they were entitled under the Mitacshara. According to that law, the property was divisible *per stirpes*. (See The Mitacshara on Inheritance, Chap. 1, Section 5, para. 12).

The plaintiff in the Cawnpore suit, as the sole descendant of Gunga Pershad, was consequently entitled to one-half, and the sons of Chundun and their descendants respectively each to the fifth of a half, or, in other words, to one-tenth of the property in that suit, accord- to the rules of the Mitacshara.

Their Lordships are of opinion that the parties are entitled to those shares in all the property movable and immovable in both suits, and also in the twenty-seven villages and in the Bunthra estate; and they will humbly recommend Her Majesty to reverse the decrees of the Judicial Commissioner and of the High Court respectively, and to decree to Ram Sahoy, the plaintiff in the Cawnpore suit, one-half of the property in that suit, and to decree to Sheo Dyal, the plaintiff in the Oude suit, a fifth of one-half, or, in other words, one-tenth of all the property in that suit, including the twenty-seven villages, and also to award and direct that the Bunthra estate be divided in the same proportions as the other property, that is to say, *per stirpes*, one-half to Ram Sahoy, and one-tenth to the descendants of each of the five sons of Chundun respectively, according to the rules of the Mitacshara.

Their Lordships will not interfere with the decree of the Judicial Commissioner so far as it relates to the costs in the Courts in Oude. They are of opinion that they should be paid out of the property to which the Oude suit relates. They are also of opinion that, under the circumstances, the costs in both the Courts in the North-Western Provinces ought to be paid out of the property to which the Cawnpore suit relates.

They will therefore further humbly advise He Majesty that the costs in all the Courts below, both in the Oude suit and in the suit in the North-Western Provinces, be ordered to be paid out of the property to which those suits respectively relate.

The costs of all the parties in these appeals will be taxed here, and must be paid out of the properties to which the suits respectively relate.

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OFFICIAL PAPER.

FOREST BOUNDARY BETWEEN THE WYNAAD AND MYSORE.

Proceedings of the Madras Government, Revenue Department, 26th June 1876.

Read the following Proceedings of the Board of Revenue, dated 19th May 1876, No. 1311, Forest No. 48:—

Read the following:—

Letter from Lieut.-Colonel R. H. BEDDOME, Conservator of Forests, to the Honorable D. F. CARMICHAEL, Secretary to Government, Revenue Department, dated Ootacamund, 1st April 1876, No. 456.

I HAVE the honor to inform you that I have just completed a tour of three weeks in the Wynaad Forests with Mr. Peet, the Deputy Conservator.

2. The most important matter connected with the Teak forests of Wynaad is the settlement of the Mysore boundary. Mr. Peet states that the Mysore Forest Department has made a great encroachment upon our forests near Rampore. Instead of taking their boundary line from that place along the cart-track which runs along a ridge and follows the water-shed till it meets Tod and Stephens' line at a point near their third stone as proposed by Dr. Cleghorn in 1859, and afterwards agreed to by both Governments, they have adopted a boundary which cuts Tod and Stephens' line at a point much nearer Ooscottah, and about where the second stone was originally placed. We met Mr. Fraser of the Survey Department at Shegabetta; he had just been making a survey of the boundary lines, and he informed me that Mr. Peet was correct in stating that Mysore had encroached upon our boundary as decided by Dr. Cleghorn. I have just received the G. O., No. 398, of the 21st March, and the Board's docket thereon, by which I perceive that the subject is forwarded to the Collector of Malabar for report, and he will doubtlessly lay the whole before Government in due form.

3. This, however, is not the only dispute. Mr. Peet states that the Mysore Forest Department have largely encroached upon our boundary line between the large Mango tree (Yerra man) west of Shegabetta and the Cubbony River. By the Trigonometrical Survey Map, our boundary from this tree runs W.N.W. to a small stream running into the Mavina hulla, thence the Mavina hulla is our boundary till it meets the Carnagal hulla close to its junction with the Cubbony; this was always understood to be our boundary till 1868, when Mysore stated that the Carnagal hulla was their boundary, claiming thereby all the tract lying between these two rivers. By the Government Orders as per margin, it will be seen that a new boundary line was fixed by Lieut. Fullerton on behalf of Wynaad and Lieut. vanSomeren on behalf of Mysore, and that each was accompanied by a Revenue Officer. From the Mango tree as far as the small stream running into the Mavina hulla, the old boundary, as laid down in the Trigonometrical Map, was adhered to; thence a line was drawn direct to the junction of the Mavina hulla and Carnagal hulla (exactly N. W.); the trees were blazed the whole way, and arrow marks cut here and there by Lieutenant Fullerton; this boundary was sanctioned by both Governments, but I think that there is no doubt that the Mysore Forest Department have cut a boundary considerably to the S.W. of this line as fixed, thereby taking in nearly all the forest they originally claimed. Mr. Underwood, the Deputy Collector, who accompanied the party with Lieutenant Fullerton, came out from Manantoddy, and he and Mr. Fraser of the Survey and some of the Kurumbers also who had been with Lieutenant Fullerton's party went along the whole distance of the line with Mr. Peet and me as far as the Cubbony, and we had no difficulty in following it with the aid of the marks on the trees and the compass, but the boundary as cut by Mysore runs as I have said considerably to the S.W. of this and not up to the junction of the two rivers alluded to. From Lieutenant Fullerton's map and Lieutenant vanSomeren's description, both published in the Government Orders marginally quoted, Mr. Fraser will have no difficulty in laying down this boundary as already settled between the two Governments, nor will he have any difficulty about the dispute near Rampore. The forests are very unhealthy just now and until the 20th May, but I would suggest that after that date no time should be lost, and that Mr. Peet and one of the Mysore Forest Officers should meet Mr. Fraser and see the question satisfactorily settled. It may seem strange that it has not been detected before, but in a large forest like this nothing can be done without consulting the compass, and great credit is due to Mr. Peet for having detected it. As far as I could learn, these boundaries have been cut entirely by native subordinates of the Mysore Department. By the boundary as adjusted by Dr. Cleghorn near Rampore and again by the line fixed by Lieutenants Fullerton and vanSomeren between the Mavina hulla and the Carnagal hulla, we have lost a very considerable tract of some of the finest Teak that appeared to belong to us by the evidence of the oldest maps, but now there is an attempt at a much greater encroachment.

G. O., Revenue Department, dated 27th April 1868, No. 1129, with a Map.

G. O., Revenue Department, dated 24th April 1868, No. 103.

4. The Wynaad Government Teak Forests

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cover an area of about 100 square miles; they abound with much valuable Teak besides other valuable timbers, viz., Blackwood (*Dolbergia latifolia*), Hone (*Pterocarpus marsupium*), and Mutti (*Terminalia glabra*); they have never as yet been taken in hand systematically and are capable of very much improvement. There is far too much bamboo (chiefly the male bamboo *Dendrocalamus Strictus*) throughout the tracts, besides much worthless growth of soft wooded trees, creepers, &c., which should come out and make way for more Teak and Blackwood, and fire annually sweeps through the forests and does very great damage. Felling has been carried on without any proper selection; it is true that only the larger trees have generally been cut, but these have not often been marked or selected with reference to their position, &c.

5. These forests may be said to be the finest Teak tract now belonging to Government. The North Canara Forests have long since gone over to Bombay, and the South Canara Teak Forests are being, I hear, alienated from the State, and the Aunamallay Teak Forests, though of finer growth than anything in Wynaad, are comparatively a small tract, of which a great portion is only held by Government on lease. I think therefore that every thing should be done to improve these forests, and that a considerable sum should be allowed annually for this purpose for several years to come, and I feel certain that money spent upon fostering the natural growth of the seedlings in these tracts will be more advantageously laid out than spending it on any Teak plantations at Nellumber or any where else either in the plains or hill tracts.

6. It is not proposed to fell timber this ensuing year beyond what may be necessary for Government requirements, and I would restrict it until the whole tract is properly surveyed and marked out into blocks.

7. We cannot possibly attempt any improvements until the forest is divided into blocks with broad rides round them, and forest surveys made of the contents of each, showing the percentage of each description of tree and of bamboos, their ages, &c., and working plans and maps regularly kept in the Forest Office with records as to all improvements proposed or carried on in each block.

8. All this will cost money and be the work of time; but I think it should be commenced at once, and, under a regular system of this sort, these forests will at some future date become a mine of wealth to the State.

9. Throughout the whole tract, which I estimate roughly at about 100 square miles, the Chetties possess many holdings, and besides these there are many portions that might be excluded from our blocks and eventually given up for cultivation.

10. It is impossible to say, even roughly, what the area of these blocks will be until the surveys have been completed; probably not less than sixty square miles; the blocks will vary in size according to circumstances, but none should exceed five square miles in extent. After the surveys have been made, it will probably be necessary to divide the forest into two or three series each under a Sub-Assistant Conservator, and the blocks (which will answer to the "*affectations*" of the French) into compartments (parcelles), each block will have its own forest guard or guards and its own records.

11. Mr. Peet is a trained Forest Surveyor, and from his long training in France, thoroughly understands the system now proposed, and is most anxious to commence it in his division. I request that early orders may be passed on this subject, and that he may commence at the eastern or the Rampore side of his forests directly the Mysore boundary question is satisfactorily settled.

12. The Benni Teak Forest which adjoins the leased forests of Mudumallay is portion of this Government Wynaad Teak tract, but this has always been attached to the Mudumallay Division, and I think it must remain so.

13. These forests will probably always have to be worked on the *Selection Felling System* (Jardinage), the trees being allowed to remain as now of all ages from large timber to seedlings, the system still in force in many mountain forests in Europe; to introduce the system of *felling by rotation of area*, the more advanced European system, it would be necessary to bring the trees of each compartment to one and the same age by the plan called *natural regeneration*; this would be the work of many years and impossible to attempt until we find that we can effectually exclude fire.

14. A few experiments on the latter system would be interesting and instructive, and a few compartments might be selected and laid up for this. I observed a few small tracts of many year old *Takkal* where all the Teak trees were of exactly the same age from the stool, all having been cut down in the same year for cultivation; such tracts are naturally far advanced towards the conditions necessary to introduce this system.

15. Wild elephants are most abundant in these forests; they were trumpetting every night round our camp, and they or their fresh tracks were seen every day; they are probably increasing rapidly, now that there are strict orders for their preservation, and unless some system of catching them is shortly put in force, they will soon become a great nuisance. They are very destructive to cultivation and to the forests, even in their present uncared-for state, but when systematic forestry comes into play,

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I am afraid to think of the destruction they will commit. I should like to see them all caught within the next five or six years, and this would not be a question of much expense if both this Government and Mysore took it in hand systematically, and the Mysore Forest Department will be equally anxious on the subject if they intend introducing systematic forestry into their portion of the belt, which I believe they do. We are in the greatest need of elephants for timber operations in several of our forests, but I hear that nearly all those lately caught by Government on different occasions have died either almost directly after their capture or soon after they were handed over to the Forest Department or otherwise disposed of. If this is the case, elephant-catching must be an expensive matter; such loss, however, does not occur in Ceylon and Burmah, and can only be the result of their treatment after capture not being understood.

16. A Mr. Brightriter, a German at present at Nellumbur, has been appointed as Forest Ranger for this division under the new revision scheme; he will be quartered in the forests at Chedalett, N. W. of the Battery, or near Rampore, as the Duputy Conservator may decide with reference to proposed operations. It is absolutely necessary that a small brick and chunam house should be erected for him immediately; the present hut at Chedalett is a wretched thatched tumbledown hut that no one could be asked to live in. I propose a small house of two rooms built of brick and chunam and tiled similar to the small houses which the Engineer's Department have lately been erecting in different parts of Wynaad, and which I believe have cost about 1,000 Rupees each; and I request that the Deputy Conservator may be allowed to send in a plan and an estimate for it through the Collector, and the godowns, stable, &c., can for the present be temporary thatched huts. Similar houses will be necessary at Rampore, Chedalett, and Goondry, but two of these can wait till next year. The Collector has already sanctioned some 600 or 700 Rupees for a wooden house in the Kodracote Forests west of the Cubbony River, and this is in course of erection, and will do for the present; but the white-ants are so terribly destructive in the Wynaad, that no wooden house will last very long.

17. These forests contrast favorably with the Anamallays as regards health; they are I believe quite healthy during the monsoon and cold weather and only feverish between the setting in of the first showers (generally late in March) and the 20th of May; whereas the Anamallay Teak Forests are also very feverish during the cold months (December and January). This year the showers set in unusually early and caught us whilst in camp in the Teak forests, and I anticipated that we should all probably get attacks of jungle fever; and since my return two out of the five servants who accompanied me have been laid up with severe fever, but the others have apparently escaped altogether.

18. These forests should in time become one of the best training grounds for the department.

19. A large area of about twenty-five or thirty square miles of some of the finest growth of Teak and situated nearly in the centre of the belt belongs to the Pulpilly Temple. This was given up to the temple by Government in their Order, Revenue Department, No. 2551-A, dated 5th December 1862, and it has always been a great thorn in our side; it has quite ruined our market at times, and always opened great facilities for smuggling; the Teak has been cut out most recklessly, and Mr. Peet informs me that there is hardly any of marketable size now left. The Irulers of the temple originally leased it out to a contractor at a very low rate, I believe $3\frac{1}{2}$ Rupees per cart load of 60 cubic feet, but I could not obtain positive information on this point; but this contractor is said to have made a very large profit by again sub-letting it. As it is now nearly worked out, and there will be no Teak available for some years, it is probable that Government could acquire the forests at a reasonable rate either for purchase outright or on stump fee, and I hope that the Collector of Malabar may be empowered to negotiate for it; if not acquired now, it will in future years be a very great drawback to the conservancy of this very important forest, and I think that Government should bid very high for it rather than lose it.

20. A small tract known as the Pambarray Forest is also in dispute; it adjoins the Pulpilly Forest on the S. W., and also contains much Teak; the Poodadi Nambiar who claimed it has died intestate. Government should also get possession of this, if possible. I have asked the Collector to add a note on this subject to this report, as I could not learn much about the right of the question in the district.

21. I was sorry to find that some felling of Hone logs had been undertaken in the Chedalett Forest during the dry season, and that consequently some of the logs had been much injured by fire; this is quite an innovation, as, formerly, felling only went on during the monsoon and the logs were all got out, or safely stored in depôts before the annual fires.

22. We have always looked to Mysore as a market for the timber from these forests, the demand for Bangalore being very great; I was sorry to find that our Mysore Depôt had been given up, rather precipitately I think, considering that the Pulpilly Forests, from which very large supplies have been going annually in that

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direction, are just exhausted. I have little doubt, however, that we can in time create a considerable market on the coast at Cannanore, Tellicherry, Mangalore, Calicut, &c., but we shall there have to compete against timber brought a shorter distance and by water carriage. Mr. Peet informed me that he had layed down Teak at Tellicherry at 11 annas the cubic foot, and that it had realized Rupees 1-8-0. It is not necessary, however, just at present to go further into the question of a market, as for several years to come, or until we have got the forests properly planned out, it is not desirable to work them beyond the requirements of the Public Works Department, and then different conditions may obtain.

23. Several roads will be required eventually, but for the present the only one necessary is one that Mr. Peet has already traced between Chedalett and Sultan's Battery, and as this will only cost Rupees 150 to 200, I have sanctioned its being made at once.

24. At Manantoddy I found Mr. Peet living with Mr. Underwood in an old Government building which has been condemned by the Public Works Department, and which appears quite unsafe. I do not know what he will do in the monsoon; his office is also in a building which has been condemned as unsafe; he is most anxious that Government should build him a small house and charge him a fair rent, and I think it most necessary that a house and office should at once be built, and I request that Government will give this their earliest consideration. In districts like this our young officers must be properly housed, or they can have no chance of keeping their health.

25. It might be a good plan to get out from England a small iron house of two rooms for the office and two similar ones for the forest instead of two of those proposed in paragraph 16; white-ants are even very destructive to brick buildings in the Wynaad, so that iron houses would be very valuable, and probably always fetch their original cost, and besides they would have the advantage of being movable which would be a great consideration in the forest.

26. The Koroth Escheat Forests have lately been handed over to this department; they consist of a tract of heavy evergreen (shola) forests, covering a quantity of small hills near the ghauts south of Periah, and are estimated at 50 square miles by the Tahsildar and 30 square miles by Mr. Peet; they will become a very valuable Cardamom tract if properly attended to, and I request sanction for obtaining the services of a man who understands Cardamom cultivation from Travancore or Mysore (the same to be paid from working charges). This last year 42 maunds were collected for the department by the Kurchias and Kaders at a cost of 450 Rupees, but owing to a combination amongst the Moplah merchants, Mr. Peet could not get offers of more than 25 Rupees per maund, so sales have not been effected. Cardamoms are worth about Rupees 1,000 the candy, which is 50 Rupees per maund, so I directed Mr. Peet to try the Madras and Bombay merchants before effecting sales. About 100 maunds of Myrabolans have also been collected and some Sheeakay (soap bean pods or *Acacia concinna*), but these have not yet been sold.

27. Outside our Teak belt, it is very difficult to ascertain what is Government and what private land in the Wynaad, and I trust that a survey and permanent demarcation of Government land may not be long delayed. I observed that the most painful destruction of forests has lately been effected by Moplahs on the slopes of the Bonasore Mountain near Manantoddy. All the heavy forest of some fine ravines protecting streams of considerable size has been felled during the last year or two by Moplahs, nominally for coffee planting, but coffee is often not planted and the tract becomes a mass of rank weeds and impenetrable thorny scrub that can never be eradicated; in fact, a splendid forest is felled and burnt for nothing, and the water-supply considerably effected. The ravines of mountains like this and of the slopes of Wynaad should be protected by legislation whether Government or private property.

No. 457.

Forwarded to the Board of Revenue, through the Collector of Malabar, with reference to Rule VIII published with G. O., No. 1662-A, of 19th November 1875, Revenue Department.

(Signed) R. H. BEDDOME, Lt.-Col.,
Conservator of Forests.

OOTACAMUND, 1*st April* 1876.

Note to the Conservator of Forests' letter, No. 456, dated 1st April 1876, to the Revenue Secretary to Government, submitted with reference to Rule VIII of the New Forest Rules.

Referring to paragraphs 2 and 3, my letter to the Board of Revenue, No. 76, dated 27th March 1876, will show how the question of the disputed boundaries stands. I await the receipt of the Revenue Survey Maps before taking further steps to have the matters in dispute definitely settled. I propose, if necessary, to meet the Deputy Commissioner of Mysore with a view to the final settlement of the questions in issue.

2. Referring to paragraphs 4 to 14, I observe that Mr. Peet has been engaged for some time in the work of ascertaining what is and what is

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not Government forests, with a view to the introduction of such a system as Colonel Beddome advocates.

3. With reference to paragraph 15, I entirely approve of Colonel Beddome's proposals for catching the elephants as soon as systematic forestry has been introduced; but as this is not likely to be the case for some time, immediate steps are not required. At the same time, there is no doubt that Government will shortly have to consider a question which I have brought forward before, *viz.*, setting aside tracts of forest as refuges for these useful animals, unless meanwhile some way of breeding them in confinement is discovered.

4. Referring to paragraphs 16, 17, 24 and 25, I am quite at one with Colonel Beddome as to the absolute necessity for housing Forest Officers comfortably in such malarious tracts of country as those under notice. When a house is *continuously* inhabited, I think a substantial wooden one with the flooring well raised off the ground is about the best for Wynaad. Planters almost universally now adopt them. They can be made on the coast and carted to the site, and with a little ingenuity they can be made to take to pieces. One more point which I have always considered to be of vital importance to health in Wynaad, is the provision of good *deep* wells dug in proper situations and as near as possible to the houses. So far as my experience goes, the men who enjoy the best health in Wynaad are the men who either take great care about the water they drink or who never touch it.

5. Paragraph 19.—The acquisition by lease or purchase of the Pulpilly Forests is a matter of much importance for futrue forest operations, and I shall, if the Government approve, make overtures to that end. I question however if the Irulers will be able to sell the forest outright.

6. With reference to paragraph 20, it seems that the Pambarray Forest was for a long time, and until 1868, worked by the Forest Department. In 1868, operations were suspended because of some claim to the forests set up by the late Poodadi Nambiar. It was not apparently in consequence of any reference from this office that the operations were suspended, and Mr. Peet has been informed that I see no objection to his demarcating the tract and resuming operations. The question of the Poodadi Nambiar escheat is altogether a separate one, and will be brought to the notice of Government in due course and through the usual channel.

7. Referring to paragraph 26, there is owing to extensive Ponam clearings, very little "heavy evergreen (shola) forest" belonging to the Koroth escheat, and, if I am not mistaken, the Cardamoms collected this last year were taken from some fine forest lying above the ghauts between Periah and Koroth.

8. Referring to paragraph 27, I quite agree with Colonel Beddome that a survey and permanent demarcation of all Government forests in Wynaad is urgently required, and more particularly in the neighbourhood of the Bonasore Mountain. Mr. Peet could probably find occupation for a large party during the whole of next season in demarcating the boundaries of such tracts as have been definitely settled. I cannot help fancying that Colonel Beddome is mistaken in supposing that the tracts he alludes to on the Bonasore Mountain, as covered with rank weeds and impenetrable thorny scrub, were never planted with coffee, because Moplahs, of all people in the world, are least likely to spend their money in cutting down forest for no purpose, and because as a matter of fact which I have already brought to the notice of the Board of Revenue large areas of land assessed as coffee are annually thrown up in Wynaad both by natives and Europeans. Colonel Beddome's last proposal in this paragraph should doubtless be considered while the new forest law is under discussion: it is one of immense importance in this district where wasteful Ponam cultivation is so largely practised.

(Signed) W. LOGAN,
Collector.

CALICUT, 21*st April* 1876.

Forwarded to the Secretary to Government, Revenue Department, through the Board of Revenue.

Colonel Beddome's Inspection Report on the Wynaad Forests will be submitted for the orders of Government.

2. Of the two boundary disputes with Mysore, referred to in paragraphs 2 and 3 of the Conservator's letter, the former has been referred to the Collector* of Malabar who, it is observed, proposes, if necessary, to arrange for a meeting between the Deputy Commissioner of Mysore and himself on the subject. This course was approved in Board's Proceedings, dated 26th April 1876, No. 1,108, and further report may be awaited. The latter dispute, as to whether the boundary acccepted by Government in the orders quoted has been properly marked in accordance with the decision, can be investigated at the same time.

* G. O., dated 21st March 1876, No. 398.

3. The Teak forests of Wynaad are said by Colonel Beddome to be among the finest Teak forests belonging to the Madras Government, and he urges the desirability of improving and preserving them to the utmost; he thinks

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money expended in this direction will be better laid out than on plantations whether on the hills or plains. As a preliminary he considers block surveys absolutely necessary, and the Collector states that Mr. Peet is actually engaged in enquiring into the different rights in these forests with a view to more strict conservancy. Colonel Beddome suggests that Mr. Peet may be directed to commence operations by surveying and dividing into blocks so soon as the boundary is settled. The Board approve this suggestion; the details may be left to the Conservator who should himself issue the necessary instructions to Mr. Peet.

4. In paragraph 15, Colonel Beddome suggests that steps should be taken to catch the elephants which now haunt the Wynaad Forests in large numbers, and the Collector approves the proposal. Colonel Beddome observes that the majority of those lately captured have died, and it seems to the Board that some enquiry as to the cause of the extensive mortality amongst these animals should be made before further captures are attempted.

5. The Board fully support the Conservator and Collector in recommending the provision of substantial houses and good wells for the use of Forest Officers. As there seems to be a doubt whether wooden houses or substantial masonry buildings are best, it would be well to try one of each kind. The requisite plans and estimate should be prepared and submitted.

6. As regards the forest attached to the Pulpilly Temple, the Collector should, the Board think, be empowered, as he suggests, to make overtures for its purchase or lease. His action in regard to the Pambarray Forest is approved, and his report on the matter of the escheat awaited.

7. The Board support Colonel Beddome's recommendation in regard to the provision of a house and office for the Deputy Conservator. They have no information as to cost, &c., of iron houses, and cannot therefore offer any opinion as to their suitability; but they are convinced that the provision of good healthy residences for Forest Officers will prove to be economical as well as humane.

8. Further enquiry seems necessary before entering on Cardamom cultivation, but, if it is found that they can be produced profitably in the Government Forests, a skilled man should be procured from Travancore or Coorg.

9. The Board concur in the Collector's remarks in paragraph 27 of Colonel Beddome's letter.

(True Copies and Extract.)

(Signed) C. A. GALTON,

Acting Secretary.

Order thereon, 26th June 1876, No. 857.

The Government observe that the boundary dispute referred to in paragraph 2 of the Conservator's letter is under reference to the Collector of Malabar, who has reported that he awaits the receipt of maps of the locality from the Survey Department.

2. In paragraph 3 Lieutenant-Colonel Beddome reports the existence of another dispute on the boundary line between Wynaad and Mysore. His remarks will be communicated to the Chief Commissioner of Mysore; and Mr. Logan will be directed to investigate this dispute also in conjunction with the Deputy Commissioner whom he is to meet shortly.

3. The proposals in regard to the survey and division into blocks of the valuable Teak forests of Wynaad are approved.

4. Paragraph 4 of the Board's Proceedings will be referred to the Judicial Department, where the cause of the mortality among newly-captured elephants is under investigation.

Vide G.O., 17th May 1876, No. 951.

5. Plans and estimates for the buildings referred to in paragraph 5 will be called for in the Public Works Department. They should be prepared in communication with the Collector and the Conservator. The proposal regarding iron houses will be considered in the Public Works Department. The Government admit the desirability of providing proper house-accommodation to their officers in Wynaad.

6. The Collector is authorised to negotiate for the lease or purchase of the forests attached to the Pulpilly Temple.

7. The Government await further report on the subject of Cardamom cultivation.

8. With reference to the points adverted to in paragraph 27 of the Conservator's letter, the Government observe that the survey and demarcation of all Government forests in Wynaad should certainly be proceeded with, as soon as the survey of the Nilgiris is completed. The necessity of providing by Legislation against the destruction of forests in ravines protecting streams will be considered in connection with the new Forest Bill.

(True Extract.)

(Signed) D. F. CARMICHAEL,

Secretary to Government.

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